THE LAW OF INSURANCE

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Second Edition

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PREFACE TO THE SECOND EDITION

The hazards of trade and commerce and the increasing complexities of life in recent years have made a precise knowledge of the Laws of Insurance, as codified in India, very important The Emergency, following the Chinese incursion into Indian territory, has led to the passing of additional Acts in this field A composite work, dealing with all the Statutes in an orderly and workmanlike manner has, therefore, become an urgent necessity The present addition seeks to supply such a want The growth of insurance in India and the complexities in the Law of Insurance confer an extra dimension of importance on the work now laid before the public The venture is the first of its kind in India

Insurance is a comprehensive word susceptible of varied meanings It is a contract of indemnity for the benefit of the insured and those in privity with him The word 'assurance', which formerly did duty for 'insurance' in its modern sense, particularly in English maritime law, has now fallen into desuetude Insurance covers a multitude of risks and, therefore, there are many kinds of insurance It is mainly of four kinds.

(1) Life, (2) Marine, (3) Fire, and (4) Accident.

The first Act in India dealing with Insurance was the Indian Life Assurance Companies Act, 1912, which was based mainly on the English Assurance Companies Act, 1909 It was applicable only to Life Insurance Companies and left untouched companies doing other kinds of insurance business The need for a comprehensive Act relating to the business of insurance was answered by the passing of the Insurance Act (IV of 1938). This Act of 1938 was subjected to several amendments, the most extensive of them being the Insurance (Amendment) Act, 1950 (XLVII of 1950) Next came the Life Insurance Corporation Act, 1956, providing for the nationalisation of life insurance business This was later followed by the Marine Insurance Act, 1963, dealing with marine insurance

The entire spectrum of Insurance Law in India, with the Insurance Act, 1938, at one end and the Emergency Risks (Factories and Goods) Insurance Act, 1962, at the other end, is presented in one volume The statutory provisions are analysed critically and analytically and the law expounded in clear language Synopsis headings under each section are given Indian, English and American cases have been pressed into the discussion The statutory and case law has been brought up to date A thorough Index enables the reader to locate quickly the reference it requires

It is conceived that the work will commend itself to the Bench, the Bar and all those engaged in the field of Insurance, and if it does, the author will feel rewarded

B. N. RANERJEE

Independence Day, 1965

PREFACE TO THE FIRST EDITION

WITH the rapid growth of the insurance business in India complexities in Insurance law are increasing every day, and a searching analysis in the legal aspects of insurance business will not be out of place My endeavour in this little book, has been to enunciate, in a short compass, the principles of Insurance Law in its different branches In all the chapters of this book except Chapter I, I have dealt upon the different topics that may generally confront a person interested in this branch of legal study

Chapter I is the outcome of the researches in the history of insurance though my attempt has been to search into its legal aspect In writing out this portion of the subject, I have derived enormous help from the numerous books cited in the footnotes To my mind for a proper understanding of any system, whether legal, social or religious, the study of its historical growth is important and instructive So I have attempted to trace the history from the day when the insurance business was in its embryo and have, though in a very limited space, shown how this great system has developed in the present shape

The principles discussed in the several chapters have been mainly deduced from various decided cases, but I must frankly admit that the cases I have noted are not exhaustive In discussing each and every topic I had in my mind the Indian aspect of the subject and I have not failed to notice the distinction between the Indian and English law wherever they are found My object throughout is not to seek to be wiser than the laws, but to search for the laws

I acknowledge with thanks the help I have derived from the celebrated works of Porter, Bunyon and Arnold among other works on the subject I am greatly indebted to Mr C R Krishna Rao, B A, B L, Advocate, Madras, for the interest he took in this publication by giving me timely and valuable suggestions I am also indebted to Mr T B Ramachandra Rao of Messrs The All-India Reporter, Ltd, Nagpur, and to his son Mr T R Krishna Murthi of Messrs The Law Book Company, Calcutta, for undertaking the publication of this book

My thanks are due to Messrs Solden & Co, Printers, Triplicane, Madras, for their neat printing and good get up

In conclusion, I must offer a word of apology to my readers for the errors and omissions that may have crept in, in spite of my care and caution

CALCUTTA

15*th December*, 1935

B N B

LAW of INSURANCE

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Page	Exact place	For	Read
214	Last para line 1	Forum	Form
308	Line 9 from top	Require	Recover
402	(i) Heading 8, line 9	Jurisdiction	Jurisdiction
	(ii) Heading 8, para 4, Line 9	Dependant (occurring in two places)	Defendant
449	Heading 4, line 2	Deemed to pay	Deemed to be unable to pay
526	Last word of last line	Capital	Capital
535	Second line of the proviso	Regiters	Registers
625	Notes, para 2, line 1	Liberally	Literally
648	Section 120, line 4	Reserved	Reserve
730	Sub-sec (3), line 1	Has in insurable	Has an insurable
	Sub-heading 2, line 1	Mortgage	Mortgagee
804	Sub-section (3), line 2	Expection	Expectation

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21 41200/

(Bringing case law up to June, 1965)

Page 265 S 33 —Insert the following new Heading 9*a* and matter after *heading 9*

9*a* *Statement to investigator under sub section (3)* —An investigator is not a public servant within the meaning of S 21 (9), Indian Penal Code The making of a statement to the Investigators under *sub-section* (3) of this section does not amount to furnishing information to any public servant as contemplated by section 176 of that Code, an omission to furnish which would be an offence under that section Such a statement is a voluntary and is admissible in evidence ; it is *not hit by section* 24, Indian Evidence Act [1]

Page 397 S 45, Footnote 3 —Insert the following case v *Life Insurance Corporation of India Parnathavarhini Ammal,* (1964) 2 M L J 212 77 M L W 363 (1964) 2 Comp L J 91

Page 448 S 53 —Insert the following new heading and matter

2*a* *Court, meaning of* —The words "the Court" in the section must be assigned the meaning given to them by the Legislature in the Act itself As regards the Court having jurisdiction for the purpose of winding up, the provisions of the Companies Act and of the Insurance Act are incon sistent Therefore the special provision in the Insurance Act must prevail over that in the Companies Act "The Court" contemplated by this section is only the Court which is either the principal Court of civil jurisdic tion in a district or a High Court which has got ordinary original civil jurisdiction If the principal place of business of an insurance company is situated in a district which has no High Court, then the Court which would have jurisdiction under this section would be the principal Court of civil jurisdiction in that district, that is, the District Court But where such place is situated in a district in which the High Court of the State is situate and such High Court has ordinary original jurisdiction, then the order of winding up of the insurance company under this section shall be made by such High Court If, on the other hand, such High Court has no such jurisdiction, the District Court for the district in which it is situated would be the principal Civil Court of original jurisdiction [2]

Page 582, S 95, heading 1—Add the following as the last para

A mutual insurance society with no share capital and with no members other than the policy-holders is very different from a company which is an entirely separate legal *entity* and whose members are distinct and sepa rate from such legal entity The legal notion of the separate *juristic* entity of a company is not enough to *override* the complete identity between the Corporation and Corporators in a mutual insurance society [3]

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1 *R K Dalmia* v *Delhi Administration* (1963) 1 S C R 253 ; (1962) 32 Com Cas 699 (1962) 2 Cr L J 805 A I R 1962 S C 1821

2. *All India T M Insurance Co* v *R George* I L R. 1962 Bom. 266 ; 64 Bom L R 219 ; 1962 Nag L J 490 33 Com Cas 1166 A I R 1963 Bom 7

3 *Calcutta H and N H B Association* v *Commissioner of Income Tax West Bengal* (1963) 47 I T R 247 A I R 1963 Cal 598

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THE INSURANCE ACT

(IV OF 1938)

An Act to consolidate and amend the law relating to the business of insurance

WHEREAS it is expedient to consolidate and amend the law relating to the business of insurance , It is hereby enacted as follows

PART I

PRELIMINARY

1 (1) This Act may be called the Insurance Act, 1938

Short title extent and commencement

(2) It extends to the whole of India * * * *[1]

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint in this behalf

SYNOPSIS

1 *Legislative history*
2 *Legislative changes*
3 *Areas to which the Act was more applicable*
4 *The preamble, its interpretation*
5 *Act if exhaustive*
6 *Statements of Objects and Reasons, admissibility in construing a statute*
7 *Commencement of the Act*

1 **Legislative history** —Before 1912 there was no legislation particularly governing insurance companies carrying on insurance business in the then British India but that those companies were being governed by the Companies Act, 1882 The latter Act was amended from time to time, such as, in 1887, 1895, 1899, 1900 and 1910 to keep the laws in conformity with the laws of England relating to companies until in 1913 the law relating to companies in India was codified in 1913 Since then far-reaching changes in the companies laws have been brought about in the recent legislation on companies in free India by the Companies Act, 1956 and by the Amendment Act LXV of 1960

In 1912 the Indian Life Assurance Companies Act was passed based mainly on the line of English Assurance Companies Act, 1909 [2] The Act was applicable only to Life Insurance Companies but companies doing other kinds of insurance business did not come within its fold Moreover the Act had

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1 The words except the State of Jammu and Kashmir" were omitted by Jammu and Kashmir (Extention of Laws) Act 1956 (1 XII of 1956) S 2

2 9 Edw 7 C 49

numerous defects and loop-holes The glaring ones were the differential treatment between the Indian companies and the foreign companies doing life insurance business in India made in the Act, namely, the foreign companies were not required to submit particulars regarding their Indian business whereas the Indian companies were required to do so, again the foreign companies were not required to make any deposit although such deposits were required to be made by the Indian companies Because of this discrimination persistent demands were made by different public bodies to bring the law on insurance business in the same level between the Indian and foreign companies In 1924 the then Government of India contemplated to amend the law on insurance business with a view to remove the above-mentioned anomalies and in 1925 a draft Bill of the proposed new Act containing provisions of a comprehensive legislation was introduced in the Legislative Assembly but its consideration was deferred to take advantage of a new legislation on insurance which was about to be enacted in England upon the recommendations of the Clanson Committee which submitted its report in February, 1927 However, no actions were taken on the recommendations of the Clanson Committee in England and hence the Government of India passed a legislation in 1928 as a stop-gap measure The object of the Act of 1928 was to collect statistics regarding insurance business in India which would later on become the basis of a comprehensive Act In 1935 the Government of India without waiting for legislation in England which was delayed appointed Shri S C Sen to report on the amendments necessary to modernise insurance legislation and practice in India Shri Sen's report was scrutinised by an Advisory Committee appointed by the Government of India which made numerous changes in the said report and in 1937 the Government introduced the Bill in the Legislative Assembly where it also underwent several changes and the present Insurance Act of 1938 emerged from the Legislative anvil A series of amendments were made to the Act in 1939, 1940 1941 1944 and 1946 but it was not until 1950 that an all comprehensive amendment to the Act was made by the Insurance (Amendment) Act, 1950 (XLVII of 1950) Thereafter further amendments to the Act have been made by Amendment Acts, namely, Acts XXXV of 1957 and II of 1961

2 **Legislative changes** —The words "except the State of Jammu and Kashmir" have been omitted by Act LXII of 1956 Hence the Act is now applicable to the State of Jammu and Kashmir

3 **Areas to which the Act was more applicable** —The Act had been applied and/or extended to —

(*a*) the partially extended areas of the District of Darjeeling,[1]

(*b*) the partially excluded areas in the Province State of Orissa,[2]

(*c*) the new Provinces and merged States by the Merged States (Laws) Act (LIX of 1949),

(*d*) the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act (XXX of 1950), and

(*e*) the State of Jammu and Kashmir by Act LXII of 1956

4 **The preamble, its interpretation** —While it is permissible to look at the preamble for understanding the import of the various clauses contained in the Bill full effect should be given to the express provisions of the Bill even

1 Vide *Calcutta Gazette* dated 6th July 1939 Notification No 1902-Com dated 28th June 1939

2. Vide Orissa Laws Validating Regulations, 1943

though they appear to go beyond the terms of the preamble Where the language of an Act is clear, the preamble must be disregarded Where the object or meaning of an enactment is not clear the preamble may be resorted to explain it Again where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply The courts cannot, therefore, start with the preamble for construing the provisions of an Act, though they would be justified in resorting to it, nay they will be required to do so, if they find, that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application [1] In another case the Supreme Court has observed that the preamble of a statute is 'a key to the understanding of it' and it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one, or to keep the effect of the statute within its real scope, whenever the enacting part is in any of these respects open to doubt [2]

5 **Act, if exhaustive** —The Preamble recites the expediency to "consolidate and amend" the law relating to the business of insurance It does not merely consolidate previous enactments or pre-existing law but it consolidates the "law" on the business of insurance and adds to the pre-existing law derogating from same Hence it is a complete Act in itself as regards the subject it deals with [3] It has been laid down by the Privy Council that the very object of consolidation is to collect the statutory law bearing upon a particular subject, and to bring it down to date, in order that it may form a useful code applicable to the circumstances existing at the time when the consolidating Act is passed [4] In *Narendra Nath* v *Kamalabasini*, the Privy Council has also observed that the object of codifying a particular branch of the law is that on any point specifically dealt with, the law should thenceforth be ascertained by interpreting the language used in that enactment, instead of, as before, searching in the authorities to discover what may be the law as laid down in prior decisions The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before [5] Where a statute is expressly said to codify the law, the courts are not at liberty to go outside the Code so created, because before the existence of that Code another law prevailed , but on any point not specifically dealt with by it the law shall be ascertained by interpreting the language used [6]

6 **Statement of Objects and Reasons, admissibility in construing a Statute** —The Statement of Objects and Reasons is certainly not admissible as an aid to the construction of a statute But it can be referred to for the

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1 *Burrakur Coal Co Ltd* v *Union of India* (1961) 2 S C A 523 1961 S C 954

2. *Keshavlal* v *States of Madras and Kerala* (1960) 2 S C A 412 1960 S C 1080 *see* also *Shaik Ali Biswas* v *Jinnatan Naher* 64 C W N 756 1960 Cal 717 / *Munsha Singh Dhaman Singh* v *State of Punjab* 1 L R (1960) Punj 589 62 Punj L R 1 1960 Punj 317 (F B) / *Prabhumull Rameswar* v *Monikchand Durga Prasad* 64 C W N 992 *Renuka Bala* v *Aswini Kumar* 1961 Pat 498 / *Kangra Valley State Company Ltd* v *Kidar Nath Gurbax Lal* 63 Punj L R 553 1961 Punj 540 (F B) / *Sardha Ram Bholal Nath* v *Puras Ram Mohan Lal* 1 L R (1962) 1 Punj 58 64 Punj L R 716 1962 Punj 147 / *Messrs Motipur Zamindary Co (P) Ltd* v *State of Bihar* 1962 S C 660

3 *See Shantanand* v *Basudevanand* 1930 All 225 (F B)

4 *Administrator General* v *Prem Lal* 22 I A 107 22 Cal 788 (P C)

5 23 Cal 563 (P C) *see* also *Gokul Mardar* v *Padmanand Singh* 29 Cal 707 (P C)

6 See *Bank of England* v *Vagliano* (1891) A C 107 60 L J Q B 145 followed in *Gopal Naidu's case* 1923 Mad 523 (F B)

limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy [1]

Where the words are clear and unambiguous it would be unreasonable to interpret them in the light of the alleged background of the statute and to attempt to see that their interpretation conforms to the said background. Again where the court is dealing with the problem of construing a specific statutory provision it would be unreasonable to invoke the assistance of English decisions dealing with the statutory provisions contained in English Law [2]. The court in construing and interpreting the constitution or provisions of an enactment has to ascertain the meaning and intention of Parliament from the language used in the statute itself and it is not concerned with the motives of Parliament [3].

There are two well-established rules of construction, namely, (1) where the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense. The words themselves in such case best declaring the intention of the Legislature and (2) where alternative constructions are equally open that alternative to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating, and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system [4].

7 Commencement of the Act —If the statute does not specify any date from which it is to commence, the effect of the omission of the date in the notification would be to bring it into operation from the date of the publication of the notification. If however, it requires any authority to specify a date for its commencement, the law will not come into effect until that date is fixed [5]. When by an Act of Legislature power is conferred upon the Government to appoint a day from which the Act would come into force the Act becomes an existing law and at least the provision regarding the commencement of Act comes into force on its passing and that any other construction will lead to stalemate [6]. Where a section of the Act authorises the Government to bring the Act into force on such date as it may, by notification, appoint and in exercise of the power conferred by that section the Government surely has the power to issue the notification bringing the Act into force on any date subsequent to the passing of the Act. There can therefore, be no objection to the notification fixing the commencement of the Act on a date which is a date subsequent to the passing of the Act, nor would this circumstance attract the principle disfavouring the retroactive operation of the statute [7].

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1 *M/s Ramgopalrao v. Government of Madras* (1952) 2 S.C.R. 374 : 1955 S.C.J. 515 : 1955 S.C.A. 814 : 1955 S.C. 604; *see also Associated Cement Companies Ltd. v. Ashok I.L.R.* (1954) 9 Raj. 1302 : 1959 Raj. L.W. 650; *Fengra Valley Slate Co. Ltd. v. Udaipur Sheth Girdhar Lal* 1961 Pun. 510 (F.B.); *Jai Prasad v. Lalka Prasad* 1962 All. 128; *Ram Chandvaram Murchandani v. India United Mills Ltd.* 63 Bom. L.R. 618 : 1962 Bom. 92; *In re Oriental Gas Co.* 68 C.W.N. 545 : 1964 Cal. 267.

2 *State of West Pepsu v. Messrs Mohinder B.T.* 1965 S.C. 779; *see also Shri Ram v. State of Maharashtra* 1961 S.C. 674.

3 *Messrs R.M.D.C. (Mysore) Private Ltd. v. State of Mysore* 1962 S.C. 594.

4 *Collector of Customs v. Digvijay Singhji Spinning and Weaving Mills Ltd.* 1961 S.C. 1519; *see also Alembic Chemical Works Co. Ltd. v. Workmen* 1961 S.C. 647 in case of welfare legislation.

5 *Pamjilal v. Municipal Committee* 1958 M.P.L.G. 529 : 1959 Madh. Pra. 82 (F.B.).

6 *Rajendra Kumar v. State of U.P.* 1962 M.P.L.J. (Notes) 2.

7 *T.P. Musaliar v. Venkatachalam* (1955) 2 S.C.R. 1196 : 1956 S.C.J. 323 : 1956 S.C.A.J. 1 : 1956 S.C. 246.

In terms of sub section (3) of section 1 of the Act, the Insurance Act was brought into force on 1st July, 1939, by virtue of the Notification No 589-1 (4)/38, dated 1st April, 1939 [1]

Applicability of the Act —Some of the provisions of this Act apply also to the Life Insurance Corporation of India constituted under the Life Insurance Corporation Act, 1956 but this Act has no application to the corporation constituted under the Deposit Insurance Corporation Act, 1961

Definitions

2 In this Act, unless there is anything repugnant in the subject or context,—

(1) "actuary" means an actuary possessing such qualifications as may be prescribed ,

(2) "policy-holder" includes a person to whom the whole of the interest of the policy-holder in the policy is assigned once and for all, but does not include an assignee thereof whose interest in the policy is defeasible or is for the time being subject to any condition ,

(3) "approved securities" means—

(*i*) Government securities and other securities charged on the revenues of the Central Government or of the Government of a [2][* * *] State or guaranteed fully as regards principal and interest by the Central Government or the Government of any [2][* * *] State ,

(*ii*) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a Port Trust or Municipal Corporation or City Improvement Trust in any Presidency town ,

(*iii*) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a [2][* * *] State as to the repayment of principal and payment of dividend ,

(*iv*) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the official Gazette , and

(*v*) subject to the limitations contained in the proviso hereto, securities guaranteed fully as regards principal and interest by a Provincial Government in Pakistan or charged on the revenues of any part of that Dominion,

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1. Vide *Gazette of India* Part I 1939 at p 631 2. *Omitted* by A L O 1956

and debentures or other securities for money issued by or on behalf of the trustees of the port of Karachi

Provided that securities or debentures specified in item (v) shall be recognised as approved securities only for such purposes and for such period and subject to such conditions as may be prescribed ,

Explanation —In sub-clauses (i) and (iii), "Government of a State" in relation to any period before the 1st November, 1956 means the Government of a Part A State

(4) "auditor" means a person qualified under the Chartered Accountants Act, 1949 (XXXVIII of 1949), to act as an auditor of companies ,

(4-A) "banking company" and "company" shall have the meanings respectively assigned to them in clauses (c) and (d) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (X of 1949) ,

(5) "certified" in relation to any copy or translation of a document required to be furnished by or on behalf of an insurer or a provident society as defined in Part III means certified by a principal officer of such insurer or provident society to be a true copy or a correct translation, as the case may be ,

(5-A) "chief agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer,

(5-B) "Controller of Insurance" or "Controller" means the officer appointed by the Central Government to perform the duties of the Controller of Insurance under this Act ,

(6) "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction ,

(6-A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies ,

(6-B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them ,

(7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944),

(8) "insurance company" means any insurer being a company, association or partnership which may be wound up under the Indian Companies Act, 1913,[1] or to which the Indian Partnership Act, 1932, applies,

(9) "insurer" means—

(a) any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, carrying on insurance business (not being a person specified in sub-clause (c) of this clause) which—

(i) carries on that business in India, or

(ii) has his or its principal place of business or is domiciled in India, or

(iii) with the object of obtaining insurance business, employs a representative, or maintains a place of business, in India,

(b) any body corporate [not being a person specified in sub-clause (c) of this clause] carrying on the business of insurance, which is a body corporate incorporated under any law for the time being in force in India, or stands to any such body corporate in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913 as defined by sub-section (2) of section 2 of that Act, and

(c) any person who in India has a standing contract with underwriters who are members of the Society of Lloyd's whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters, but does not include a principal agent, chief agent, special agent or an insurance agent or a provident society as defined in Part III,

(10) "insurance agent" means an insurance agent licensed under section 42 who receives or agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance,

1 Now see the definition given in clause (21) of the Companies Act 1956,

(10-A) "investment company" means a company whose principal business is the acquisition of shares, stocks, debentures or other securities ,

(11) "life insurance" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance ,

(b) the granting of annuities upon human life , and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons ,

(12) "manager" and "officer" have the meanings assigned to those expressions in clauses (9) and (11) respectively of section 2 of the Indian Companies Act, 1913 ,

(13) "managing agent" means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called

Explanation —If a person occupying the position of managing agent calls himself manager or managing director, he shall nevertheless be regarded as managing agent for the purposes of section 32 of this Act ,

(13-A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risk customarily included among the risks insured against in marine insurance policies ,

(13-B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clauses (6-A), (11) and (13-A),

(14) "prescribed" means prescribed by rules made under section 114,

(14-A) [*Omitted by Act XLII of 1956*]

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(*i*) performs any administrative and organising functions for the insurer, and

(*ii*) procures general insurance business whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer,

(16) "private company" and "public company" have the meanings respectively assigned to them in clauses (13) and (13-A) of section 2 of the Indian Companies Act, 1913 (VII of 1913),

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agent on behalf of the insurer, but does not include a chief agent

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1 Definition clause, its interpretation—When the Act itself provides a dictionary for the words used, the Court must look into that dictionary first for an interpretation of the words used in the statute The Court is not concerned with any presumed intention of the Legislature, its task is to get at the intention as expressed in the statute An artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition, but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended Where within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it could be wrong to take the definition as destroying the essential meaning of the word defined [1] But a wrong application of the definition to cases which are not strictly caused by it cannot vitiate the definition if otherwise it is not open to challenge [2] The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense Where the Courts are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation [3] The word "includes" is used in the definition clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and when it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their natural import but also things which the interpretation clause declares that they shall include [4]

2 Actuary, his qualifications and main functions—To be an actuary within the definition of the Act, he must possess either of the following qualifications, namely,—

(*a*) he must be a Fellow of the Institute of Actuaries London or

(*b*) he must be a Fellow of the Faculty of Actuaries in Scotland,

but the following persons may also be called actuaries within the definition of the Act when the Controller grants an application or permits any of them to sign as actuary who satisfies the following conditions, namely,—

1 *Harjivandas Shivshankar* v *A D Divelkar* 1957 S C J 83 : 1957 S C A 57 1957 S C 121
2. *Jeevan Textile Finishing Mills Ltd* v *State of Punjab* 1957 S C J 275 1957 S C A 610 : 1957 S C. 329
3 *State of Bombay* v *Hospital Mazdur Sabha* (1960) 2 S C A. 213 1960 S C J 679 1960 S C 610
4 *Ghanashyam Misra* v *State of West Bengal* 1959 C L J 15 *see* also *Cotton Mills Ltd* v *State of M P* 1961 M P C 396 1961 M P L J 474 : 1961 Madh Pra 257 *St James* v *Dr Abdul Khair* 1961 B L J R 208 1961 Pat 242.

(*a*) that he is employed by an insurer or a provident society to carry out any of his or its obligations under the Act ,

(*b*) that he is an Associate of the Institute of Actuaries, London or of the Faculty of Actuaries in Scotland , or

(*c*) that he is a person having actuarial knowledge for any prescribed purpose [1]

Under the Insurance Companies Act, 1958,[2] of England the prescribed qualifications of an actuary are that he must be either (*i*) a Fellow of the Institute of Actuaries or of the Faculty of Actuaries , or (*ii*) when application is made by a company and where, in the opinion of the Board of Trade, special circumstances exist, an Associate of the Institute of Actuaries or of the Faculty of Actuaries , or (*iii*) such other person having actuarial knowledge as the Board of Trade may, on the application of a company, approve [3]

The main functions of an actuary under the Act are—

(*i*) that his certificate, regarding life insurance of the assured rates, advantages, terms and conditions offered in such policies are workable and sound, is required when the insurer applies for a certificate of registration under section 3 of the Act ,

(*ii*) that he may scrutinise the statement of soundness of terms of life insurance business when appointed by the insurer and approved by the Controller in case where it appears to the Controller of Insurance that the rates, advantages, terms and conditions mentioned in the statement of the insurer are not workable or sound according to provisions of section 3B of the Act,

(*iii*) that he is to make actuarial report and abstract in terms of section 13 of the Act , and

(*iv*) that he is to sign a valuation statement which is submitted along with the returns to the Controller as provided in section 15 of the Act

3 **Auditor, his qualifications and functions** —An auditor within the definition of the Act must be either an Associate or Fellow of the Institute of Chartered Accountants of India in terms of section 5 of the Chartered Accountants Act (XXXVIII of 1949) and he has obtained a certificate of practice from the Institute and is designated as a Chartered Accountant in terms of sections 5 and 7 respectively of the said Act Section 2 (2) of the Chartered Accountants Act gives the definition of Chartered Accountants for all practical purposes [4] Even when a Chartered Accountant is working as a liquidator in pursuance of an order passed by the High Court he must be deemed to be in practice within the meaning of section 2 (2) of the said Act [5]

The functions of the auditor under the Act are—

(*i*) he shall audit annually all insurance business transacted by an insurer with respect to balance-sheet, profit and loss account,

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1 *Vide* R 3 of the Insurance Rules 1939
2 6 and 7 Eliz 2 C 72.
3 *See* R 15 Assurance Companies Rules 1950 and S 33 of the Insurance Companies Act, 1958.
4 *See R. B Bam* v *P K Mukherji* 1957 Cal 449
5 *Council of the Institute of Chartered Accountants* v *B Mukherjea* 1958 S C R 371 : 1958 S C J 312 1958 S C 72

revenue account and profit and loss appropriation account in terms of section 12 of the Act ,

(*ii*) he shall verify that the regulations and forms for the preparation of balance-sheet as prescribed in the First Schedule, the regulations and forms for the preparation of Profit and Loss Accounts as prescribed in the Second Schedule and regulations and forms for the preparation of Revenue Accounts as prescribed in the Third Schedule to the Act are complied with ,

(*iii*) he shall also audit the account of the period where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account as per terms of sub section (5) of section 13 of the Act , and

(*iv*) he shall sign one of each four copies of returns to be submitted to the Controller in accordance with the provisions of section 15 of the Act

4 **Agents, different kinds of** —The Act has not defined what an agent means but instead it has classified different kinds of agents and has defined them The classes to which the agents have been divided are—(*i*) principal agent, (*ii*) insurance agent (*iii*) chief agent, and (*iv*) special agent The classification has been based primarily on the life insurance business and insurance business other than life insurance Thus, the words 'chief agent' and 'special agent' have been applied to those agents who solicit or procure life insurance business, and the expressions ' principal agent" and "insurance agent" have been applied to those agents who solicit or procure general insurance business or insurance business including business relating to the continuance, renewal or revival of policies of insurance

The main features common to all kinds of agents, whether chief, principal, special and insurance agents are—(*i*) they are not salaried employees of the insurer employing them , (*ii*) they receive commission for consideration of their work and (*iii*) their main function is to solicit or procure insurance business or life insurance business as the case may be Further, features common to 'chief agent' 'principal agent' and 'special agent' are that he can procure general insurance business or life insurance business, as the case may be, either (*a*) by himself personally or (*b*) through insurance agents employed or caused to be employed by him The insurance agent as defined in the Act has no power to employ or cause to be employed any such agent under him Morever the chief agent and the principal agent have to perform any administrative and organizing functions for the insurer which the other kinds of agents have not been empowered to perform The definition of 'chief agent' and 'principal agent' as given in the Act is the same According to the definition both these classes of agents have the same common features *viz* (*i*) they are persons and not individuals as in the case of insurance agents, (*ii*) they are not salaried employees of any insurer , (*iii*) they perform their functions in consideration of commission and (*iv*) their functions are—(*a*) administrative, (*b*) organizational, and (*c*) procurement of life insurance business in case of chief agent and general insurance business in case of principal agent either by wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer But the essential difference between them is that the chief agent is so called in relation to life insurance business whereas the principal agent is so called in relation to general insurance business The difference between the chief agent and the special agent lies in the fact that former has to perform administrative and organizational functions for the

insurer while the latter has not been empowered to do so The difference between chief agent, special agent, and principal agent on one hand and the insurance agent on the other lies in the fact that the latter must be an individual and must not be a firm or incorporated company, while the former may be either of them Further, an insurance agent must be licensed under section 42 of the Act whereas no such licence is contemplated in case of the former

The word 'agent' has not been defined in the English Insurance Companies Act, 1958 nor does it find any place in the body of the said Act As all artificial persons, *viz* the companies, act only through agents English insurance companies are no exception to that rule Primarily their chief agents are their directors, elected or appointed by the members whose powers cannot be greater, but may be less than those of the company itself *Prima facie* the powers of such general agents are co extensive with the business entrusted to their care and will include the power to enter into written contracts of insurance But assurance companies employ a good number of special or local agents to solicit applications for insurance and collect the premium The powers of such agents vary widely and their ostensible authority is a question of fact in each case [1]

The liability of an insurance agent to his principal is determined by the law of agency All agents, whether paid or unpaid, skilled or unskilled, are under a legal obligation to exercise due care and skill in the performance of the duties which they have undertaken, a greater degree of care being required from a paid than from an unpaid, and from a skilled than from an unskilled agent The agent is also bound to obey the express orders of his principal, but, if those orders are so ambiguous as to be reasonably susceptible of two distinct meanings and the agent *bona fide* acts upon one of them, he will, according to the ordinary laws of agency, be held justified in so doing and will be exempt from liability [2]

(*a*) *A medical examiner, whether an agent of the company?* —Although it has been held that a medical examiner represents both insurer and insured, as a general rule a medical examiner of a life insurance company is held to be an agent of the company, although he is paid by insured for the examination, and notwithstanding a recital in the application or policy that he shall be regarded as the agent of insured [3]

(*b*) *Insurance agent generally, and insurance broker* —An insurance agent may be said, generally, to be one employed by an insurance company to solicit risks and effect insurance The expression 'insurance agent' has also been defined to be one appointed by an insurance company to perform some act or acts in furtherance of the business of his principal He is a person expressly or impliedly authorized to represent the insurer in dealing with third persons in matters relating to insurance

In the United States there are different kinds of agents, *viz* (*i*) *general agents*, *i e* an agent authorized to accept risks, agree or and settle the terms of insurance contracts, issue policies by filling out blank instruments which are furnished him for that purpose, and to renew policies is a general agent , (*ii*) *soliciting agents*, he is merely a special agent and has authority to perform such acts

1 *See* Preston and Colinvaux Law of Insurance 2nd Edition 1961 pp 243-44

2. *See* Halsbury Laws of England 3rd Ed Vol 25 p 47-48

3 See *Strand v Bankers Life Insurance Co of Lincoln* 213 N W 349 *Pizak v Modern Brotherhood of America* 177 Ill App 113 *Weisguth v Supreme Tribe B H* 194 Ill App 17 *Sternaman v Metropolitan Life Insurance Co* 62 N E 763 quoted in Corpus Juris Secundus, Vol 44 at p 806

as are incident to the power of soliciting insurance and submitting applications therefor to the company, but he has no authority to bind the company as to matters relating to the subsequent contract of insurance, (*iii*) *territorial or local agent* for specified territory or area, although he is so called, his field of operation may be very large and yet his powers be special and limited, and on the other hand his field of operations may be confined to a comparatively small territory and yet his authority within that field be unlimited, (*iv*) *Debt agent*, he collects weekly or monthly premiums from a number of policy holders generally small policies of industrial insurance and the amounts so collected are debited to the agent, (*v*) *policy writing agent*, an insurance agent who has authority to issue and countersign policies is a policy-writing agent

An insurance broker is one who acts as a middleman between the insured and the company, he solicits contracts from the public under no employment from any particular company but having secured an order places the insurance with the company selected by insured, or, when there is no such selection, with the company of such broker's choice He is also called an insurance solicitor A broker who effects an insurance with an underwriter is not his agent and is under no legal liability to him to use care or skill in effecting the insurance [1] A broker has, in the absence of the express authority of his principal, no authority to cancel a policy, whether it is left in his hands or not, but a broker effecting a policy in England under instructions given him in a foreign country will have implied authority to cancel that policy if such authority is conferred upon him by the law of the foreign country [2]

An agent may be appointed not only for the purpose of effecting sea policies for the assured but also for the purpose of subscribing them for the underwriters [3] An underwriter at Lloyd's having express authority to act as their agent for the purpose of underwriting policies of insuran e and carrying on the business of an underwriter at Lloyd's has authority to underwrite guarantee policies, that being part of the ordinary business of an underwriter at Lloyd's [4]

(*e*) *Dual agency, its permissibility* —As a general rule the same person cannot act as agent for both the company or insurer and insured But the rule is subject to certain exceptions The most important of these exceptions is that he is permitted to so act with the knowledge and consent of both and in so acting he does not represent conflicting interests [5]

(*d*) *Sub-agents* —A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency [6] Three classes of sub-agents may be contemplated, *viz*, (*i*) a sub-agent employed with any express or implied authority of the principal (*ii*) a sub-agent employed with the express or implied authority of the principal but without any privity of contract between him and the principal, and (*iii*) a sub-agent employed with the authority of the principal and with privity of contract between him and the principal In cases (*i*) and (*ii*) the agent is responsible to the principal for the acts and defaults of the sub-agent but in case

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1 *Fenpress Assurance Corporation* v *C T Bowring & Co* (1905) 11 Com Cas 107 *Glasgow Assurance Corporation* v *William Symondson & Co* (1911) 104 L T 254

2. *Ruby S.S Corporation Ltd* v *Commercial Union Assurance Co Ltd* (1933) 150 L T 38 C A

3 *See* cases cited in Halsbury Laws of England Vol 22 at p 50

4 *Hambro* v *Burnaud* (1904) 2 K B 10

5 *See* Corpus Juris Secundus Vol 44 p 807 and cases cited therein

6 S 191, Indian Contract Act IX of 1872.

(*iii*) the sub-agent has the rights and liabilities of an agent *vis-a vis* the principal [1]

Ordinarily an agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or from the nature of the agency, a sub agent must, be employed [2] The general rule of the maxim '*delegatus non potest delegare*' is embedded in section 190 of the Contract Act The maxim imports that an agent cannot, without authority from his principal, devolve upon another obligations to the principal which he has himself undertaken to fulfil personally [3]

(*e*) *Insurance agent, extent of authority* —The terms of agency in the contracts between the insurer and their agents govern the relations *inter se* So far as third parties are concerned, unless they are fixed with the knowledge of these terms, they are entitled to proceed on the footing that the agent has the authority to do what in actual practice the insurer allows him to do If the insurer allows his agent to collect monies and issue to the payer due receipts for the amounts so collected he must be deemed to have held out his agent as a person authorized to collect Where the printed form of contract contains terms of agency to the effect that an agent is not entitled to collect any premium or debts payable to the Insurance Company such terms do not hinder the company from authorising the agents to collect, those terms only prevent the agents from claiming or exercising right to collect Therefore, though the agent is not entitled as of right to collect any premium or moneys, he is not prevented when authorized from acting in this respect for the insurer so as to bind the principal Further, the agent's authority to receive payments from the policyholder may also be an implied one [4]

(*f*) *Statutory agency* —The different classes of agents contemplated under the Insurance Act, *viz*, chief agent, principal agent, special agent and insurance agent, are statutory agents Insurer or insurance company, as the case may be, cannot escape effect of the Act, declaring person performing certain acts relating to soliciting and contracting for insurance to be insurer's agent, by allowing its sole agent to employ assistants to conduct business [5] Where insurer's agent, to whom facts regarding risk are correctly stated, makes erroneous insertion in application, insurer is chargeable with agent's mistake, the agent's knowledge being binding on the company [6] The authority of an insurance agent never goes further than that conferred on him in writing by his insurer, or beyond the scope of the licence issued to him under section 42 of the Insurance Act [7]

In the United States, there is a distinction between a general agent of a fire insurance company and a soliciting agent for a life insurance company Life insurance agents are rarely, if ever, general agents in the sense that they execute and deliver policies, as is often done in the business of fire insurance,

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1 *See* Halsbury s Laws of England, Simond's Edn Vol 1 p 172

2 *See* S 190 Indian Contract Act

3 *See De Bussche* v *Alt* (1878) 8 Ch D 286, *Lyon* v *Jerome* (1841) 37 Am Dec 271 *Hole* v *Sittingbourne Co* (1861) 158 E R 201 *see* also *Dada Bhagvalingam* v *Indo-Commercial Bank Ltd* 1961 Andh Pra 346 *Purushottam Haridas* v *Amruth Ghee Co Ltd* (1960) 2 Andh W R 115 1960 Andh L T 524 *Amrital* v *Bhagwandas* I L R 1937 Bom 454 1939 Bom. 435, *Mahinder Das* v *Mohan Lal* 1939 A I J 37 1939 All 188 *Punjab National Bank* v *Hukam Chand* 1938 Pesh 63,

4 *Hindustan Ideal Insurance Co Ltd* v *B Jayalakshamamma* 1959 Andh Pra 562.

5 *Aetna Insurance Co* v *Lester* 154 S O 706 170 Miss 353

6 *Bonach* v *West Virginia Insurance Co* 185 S E 201 117 W Va 110

7 See *Bonach* v *Metropolitan Life* 127 P 2d 499 in case of a

but they often have and exercise general control or power with respect to the particular branch of the business committed to their hands, and to that extent at least are general agents [1]

5 **Insurer, classes of insurers**—The word 'insurer' or 'assurer' ordinarily means a person or an individual who undertakes, for compensation, to make good losses, as by fire, or to pay money in certain contingencies, as the death or injury of insured An 'assurer' is defined as an insurer against certain perils and dangers, an underwriter, an indemnifier The word 'insurer' has relation with the word 'insure' which means to act as insurer, *i e*, to engage to indemnify a person against pecuniary loss from specified perils, to assure against a loss by a contingent event on certain stipulated conditions or at a given rate or premium, to give, take, or procure an insurance on or for, to enter into, or carry, a contract of insurance on [2]

Under common law anyone with normal contractual capacity may enter into a contract of insurance Even in marine insurance all persons competent to contract may be parties to it but subject to the restrictions imposed directly and indirectly by the Assurance Companies Acts, 1909 to 1946 The Insurance Companies Act, 1958, which came into force on 1st November, 1958, has restricted the classes of persons who may engage in insurance business Maugham, J in *Re North and South Insurance*[3] has justified such legislation in the following words "An insurance company differs in its nature from almost every other trading concern It starts, in the first instance, without liabilities It obtains premiums sometimes to very large amount Inasmuch as the claims come in in every case after the premiums have been secured, there is always a risk that an insurance company may, by offering what look like very advantageous terms to the public, obtain a very large premium income which, as the result of the practical working of the company, proves to be an insufficient income for the purpose of meeting claims"

The Insurance Act, 1938, has also restricted the classes of persons who may engage in insurance business in India The definition of the word 'insurer' given in the Act contemplates three categories of insurers and hence these three classes of insurers can engage in insurance business within the framework of the Act Broadly speaking these three classes of insurers are—(*i*) Non Indian or foreign insurer, (*ii*) Purely Indian insurer, and (*iii*) Lloyd's Agents in India Having classified the insurer into three classes elastically the definition restricts those classes within certain bounds Thus a non-Indian or foreign insurer may be (*a*) any individual, (*b*) any unincorporated body of individuals, or (*c*) any body corporate incorporated under the law of any country other than India but they must carry on insurance business and must not be Lloyd's Agents within the meaning of class (*iii*) above Moreover, these categories of non-Indian insurer (*i*) must carry on that kind of insurance business in India or (*ii*) must have his or its principal place of business or be domiciled in India, or (*iii*) must have employed a representative, or have maintained a place of business in India

Second group of insurer, namely a corporate body incorporated under the law in force in India, *i e* the Companies Act, 1956 or under the previous Companies Act or a subsidiary company of any public company, must be carrying on the business of insurance at the date of the commencement of the

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1 *See American Life Insurance Co of Alabama v Aladdin Temple Ben Ass n etc* 191 S O 903 ; *McDonald v Equitable Life Assurance Society* 169 N W 352.

2 *See* Corpus Juris Secundus Vol 44 PP 498 and 499

3 1933-47 Ll L. R 356—358.

Insurance Act The difference between the non-Indian and Indian insurer is that individual or unincorporated body of individuals carrying on insurance business in case of non-Indian insurer would come within the fold of the definition of insurer but in case of non-Indian insurer individual or unincorporated body of individuals cannot so come Only incorporated body and a subsidiary company will come to mean as insurer within this definition so far as Indian insurer is concerned

(*a*) *Subsidiary company, meaning of* —A company shall be deemed to be a subsidiary of another if, but only if,—

(*a*) that other controls the composition of its Board of Directors , or

(*b*) that other—

(*i*) where the first named company is an existing company in respect of which the holders of preference shares issued before the commencement of the Companies Act, 1956, have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company ,

(*ii*) where the first-mentioned company is any other company holds more than half in nominal value of its equity share capital , or

(*c*) the first-mentioned company is a subsidiary of any company which is that other's subsidiary

Illustration

Company *B* is a subsidiary of company *A* and company *C* is a subsidiary of company *B* Company *C* is a subsidiary of company *A*, by virtue of clause (*c*) above If company *D* is a subsidiary of company *C*, company *D* will be a subsidiary of company *B* and consequently also of company *A*, by virtue of clause (*c*) above, and so on

In determining whether one company is a subsidiary of another—

(*a*) any shares held or power exercisable by that other company in a fiduciary capacity shall be treated as not held or exercisable by it ,

(*b*) subject to the provisions of clauses (*c*) and (*d*), any shares held or power exercisable—

(*i*) by any person as a nominee for that other company (except where that other is concerned only in a fiduciary capacity) , or

(*ii*) by, or by a nominee for, a subsidiary of that other company, not being a subsidiary which is concerned only in a fiduciary capacity ,

shall be treated as held or exercisable by that other company ,

(*c*) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded ,

(*d*) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary, not being held or exercisable as mentioned in clause (*c*), shall be treated as not held or exercisable by that

other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business

The composition of a Company's Board of Directors shall be deemed to be controlled by another company, if, but only if, that other company by the exercise of some power exercisable by it at its discretion without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships, but for the purposes of this provision that other company shall be deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied, that is to say—

(*a*) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power as aforesaid,

(*b*) that a person's appointment thereto follows necessarily from his appointment as director, managing agent secretaries and treasurers, or manager of, or to any other office or employment in that other company, or

(*c*) that the directorship is held by an individual nominated by that other company or by a subsidiary thereof [1]

Under the English Companies Act, 1948,[2] a company is deemed to be a subsidiary company of another if (1) the other is a member of it and controls the composition of its Board of Directors, or (2) the other holds more than half in nominal value of its "equity share capital", or (3) a company is a subsidiary of any company which is in turn a subsidiary of another company [3]

The third and the last group of insurer coming within the definition of the Insurance Act 1938, is the Lloyd s Agents in India Such agents may be (*a*) an individual, or (*b*) unincorporated body of individuals, or (*c*) a corporate body incorporated either under the Indian law or under the law of any country other than India But such persons do not include (*a*) a principal agent (*b*) chief agent (*c*) special agent, or (*d*) an insurance agent, or (*e*) a provident society as defined in Part III of the Act Moreover, these persons must have standing contracts with underwriters who are members of the Society of Lloyd s whereby they are authorised within the terms of those contracts to issue protection notes cover notes, or other documents granting insurance cover to others on behalf of the underwriters

(*b*) *Underwriter, meaning of*—The word "underwriter" is a word borrowed from the early method of obtaining marine insurance In such kind of insurance the insurer is commonly called the underwriter, because he subscribes the policy But now it has an accepted and well understood meaning, namely, an insurer—any one who insures another, on life or property, in a policy of insurance [4]

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1 *See* S 4 (1) (3) and (2) and illustration

Companies Act 1956 as amended by the Amendment Act LXV of 1960

2 11 and 12 Geo 6 C 38

3 *See* S 154 of the Act and Palmer s Company Law, 20th Edn p 609

4 See *Childs* v *Firemen's Insurance Co*, 6 N W 141 66 Mina 393 35 L R A 99

The word 'underwrite' in insurance parlance, means to write one's name under, or set one's name to a slip or policy of insurance, originally marine insurance, for the purpose of thereby becoming answerable for a designated loss or damage, hence to insure on life or property, also, to assume a certain sum or risk by way of insurance [1]

(*c*) *Society of Lloyd's*.—The association of underwriters and brokers came to be known as "Lloyd's" as early from the seventeenth century. The word "Lloyds" is associated with the name of Edward Lloyd, a small coffee-house-keeper, in whose coffee-house the commercial community interested in shipping met. The coffee-house was first situated at Tower Street in London and after 1691 it was shifted at a place in the corner of Abchurch Lane and Lombard Street. Here, any person requiring insurance could find insurers who would each assume a part of his risk. Insurance contracts took the form of a bargain between those interested in a marine adventure and other traders who were willing to take a share of the risk for a money 'premium'.

Although the principle of individual responsibility for the part of a risk has not been altered, the early informality of Lloyd's has given way in succeeding years to an increasingly rigorous organisation and control, directed by a committee. In 1871, Lloyd's was incorporated by Act of Parliament *i.e.* Lloyd's Act, 1871[2] and in 1911, a further Act *viz.*, Lloyd's Act, 1911[3] sanctioned the existing though unrecognised practice of underwriting non-marine risks. In addition to its primary function as an incorporated society of individual underwriters, Lloyd's has maintained the practice of Edward Lloyd of providing shipping intelligence by the publication of Lloyd's List and Shipping Gazette. The society also appoints agents in all the principal parts of the world, whose duty it is to forward regularly its accounts of all departures from and arrivals at their ports, as well as of losses and casualties and general information relating to shipping and insurance, these agents are appointed by the Corporation of Lloyd's and are not agents of the underwriters [4].

(*d*) *Cover notes, meaning of*.—A 'cover note' is an interim protection pending the issue of a policy. It usually states that it is to be in force for a limited period of time or until a policy is delivered. Such a note is in fact a temporary or provisional contract of insurance quite distinct from that embodied in the policy, and the fact that the assured changes his mind and decides to negotiate with another company does not affect the cover already given him by such a note. When the assured pays all or a part of the premium, the insurer may combine the receipt with the cover note which is then known as a deposit receipt [5].

A slip, unlike a cover note, is not merely a contract of temporary insurance pending inquiries, but is an acceptance of the proposal binding the insurers to issue a policy in accordance with its terms. A 'slip' contains short particulars of the risk and insurance brokers who offer insurances of any kind to underwriting members of Lloyds or to marine underwriters of insurance companies do so by means of such a 'slip'. The underwriter who accepts it marks on the 'slip' the amount which he is willing to take and signs or

1. *See* Webster New International Dictionary.
2. 34 and 35 Vict. c. XXI.
3. 122 Geo. 5 c. LXII.
4. See Halsbury's Laws of England Vol. 22 Simonds Edition 1958 at p. 10 and *Wilson v. Salamandra Assurance Co.* (1903) 88 L. T. 96.
5. See *Mackie v. European Assurance Society* (1869) 21 L. T. 102; *Thompson v. Adams* (1899) 23 Q. B. D. 361 *per* Mathew J.; *Re Yager and Guardian* (1912) 108 L. T. 38; *Mayfair v. Royal* (1922) 38 T. L. R. 334.

initials it [1] A 'slip' resembles a 'cover note' in non-marine cases because it binds the insurers just as a policy would have done had it been issued[1], but in marine insurance it is nothing more than an "honour" contract as no action can be brought on it by virtue of section 22 of the Marine Insurance Act, 1906 It is however, usual to deliver a stamped policy in terms of the 'slip' even if a loss occurs in the meanwhile or the insurers deny liability for the loss On receipt of such a policy the assured may bring an action upon it [3]

Sometimes a 'slip' may be known as a 'binder' or a 'binding slip' which means a written memorandum of the most important terms of a preliminary contract of insurance intended to give temporary protection pending the investigation of the risk of insurer, or until the issuance of a formal policy It is a contract of insurance *in praesenti*, temporary in its nature, intended to take the place of an ordinary policy until one can be issued It is also called a short method of issuing a temporary policy for the convenience of all parties to continue unless sooner cancelled, until the execution of a formal policy [4]

(*e*) *Insurer domiciled in India* —Domicile has been defined to be 'the country which is taken to be a man's permanent home,[5] but domicile and residence are not identical things It has been said that "domicile is an idea of law It is the relation which the law creates between an individual and a particular locality or country To every adult person the law ascribes a domicile and that domicile remains his fixed attribute until a new and different attribute usurps its place '[6] In its legal concept the word 'domicile means 'the place with which a person has a settled connection for certain legal purposes, either because his home is there or because that place is assigned to him by law "[7]

Domicile may be acquired (1) by birth (2) by choice and (3) by operation of law But when *A* of country *X* goes to a foreign country *Y* for the purpose of his business and even if he stays at *Y* until he has made a fortune he retains his domicile of origin, *i e*, of country *X*, and the factum of his staying at *Y* would be no proof that he has adopted the domicile of his choice, *viz*, of country *Y* But if *A* s original intention of temporarily residing in country *Y* could be shown to have become unlimited thereafter such a change of purpose may be construed to be a change of domicile but not otherwise [8] The general rule is that when the intention to reside permanently in a place exists such residence in pursuance of that intention will establish the domicile but such intention must be conscious or deliberate and not due to any external necessity such as, imprisonment, a political refugee, change of climate on grounds of health service or on diplomatic mission [9]

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1 *Thompson* v *Adams* (1889) 23 Q B D 361, *Haase* v *Evans* (1934) 48 Ll L R 131 *Grover* v *Matheus* (1910) 2 K B 401

2 *Thompson* v *Adams* supra

3 *See Fishman* v *Northern Maritime* (1875) L R 10 C P 179 *Re Yager and Guardian* (1912) 108 L T 38

4 *See Slots Distributing Corporation* v *Travellers Indemnity Co* 30 S F 2d 377 *Fort Valley Coca Cola Bottling Co* v *Lumbermen s Mutual Casualty Co* App 24 S E 2d 849 quoted in Corpus Juris Secundus, Vol 44 p 497

5 Halsbury s Laws of England 3rd Ed Vol 6 p 198.

6 *Bell* v *Kennedy* (1868) L R 1 H L (S C) 307 at p 319

7 American Restatement para 9 quoted in Basu s Constitution 4th Ed Vol I p 83

8 *Jopp* v *Wood* (1865) 4 De G J and S 616 *Udny* v *Udny* (1869) L R I S C and Div 441

9 *Ramsay* v *Liverpool Royal Infirmary* (1930) A C 588 *Bell* v *Kennedy* (1868) L R 1 H L (S C) 307, *Bowes* v *Liverpool Cheshire Infirmary* (1930) A C 588 Private International Law 1947 pp 167 *Moorehouse* v *Lord* (1863) 10 H L C 272 *May* v *May* (1943) 2 All E R. 146.

Domicile is determined by the *lex fori* which means that the domicile of a person has to be determined by the law of the country of domicile Thus, where the question as to whether '*A*' is domiciled in India arises it has to be ascertained according to the Indian law The Supreme Court in *Central Bank of India Ltd* v *Ram Narain*,[1] has observed thus, " two constituent elements that are necessary by English Law for the existence of domicile are (1) a residence of a particular kind, and (2) an intention of a particular kind There must be the factum and there must be the animus The residence need not be continuous but it must be indefinite, not purely fleeting The intention must be a present intention to reside for ever in the country when the residence has been taken up It is also a well established proposition that a person may have no home but he cannot be without a domicile and the law may attribute him a domicile in a country where in reality he has not A person may be a vagrant as when he lives in a yacht or wanderer from one European hotel to another, but nevertheless the law will arbitrarily ascribe to him a domicile in one particular territory In order to make the rule that no body can be without a domicile effective, the law assigns what is called a domicile of origin to every person at his birth This prevails until a new domicile has been acquired, so that if a person leaves the country of his origin with an undoubted intention of never returning to it again, nevertheless his domicile of origin adheres to him until he actually settles with the requisite intention in some other country "

Article 5 of the Constitution of India prescribes that at the date of commencement of the Constitution, *i e*, 26th January, 1950, every person who has his domicile in the territory of India and (*a*) who was born, or (*b*) either of whose parents was born, or (*c*) who has been ordinarily resident, in the territory of India, for not less than five years immediately preceding such commencement, shall be a citizen of India Articles 6, 7 and 8 respectively provide (*i*) rights of citizenship of certain persons who have migrated to India from Pakistan, (*ii*) rights of citizenship of certain migrants to Pakistan, and (*iii*) rights of citizenship of certain persons of Indian origin residing outside India Article 9 provides that persons voluntarily acquiring citizenship of a foreign State shall not be citizens of India, and Article 10 speaks of continuance of the rights of citizenship' But the law of citizenship in India is now governed by the Citizenship Act (LVII of 1955) Sections 3, 4, 5 and 6 of this Act respectively provide acquisition of citizenship (*i*) by birth, (*ii*) by descent, (*iii*) by registration, and (*iv*) by naturalization Sections 7 and 8 provide citizenship by incorporation of territory and renunciation of citizenship Section 9 speaks of termination of citizenship, section 10 of deprivation of citizenship and section 11 of Commonwealth Citizenship

[1] Under section 3 (42) of the General Clauses Act, 1897, the word 'person' includes both natural and artificial persons According to Private International Law, a corporation is capable of having both a 'residence and a 'domicile' Generally speaking, a company resides where the central management and control abide A corporation has only its domicile of origin and it cannot change it it is domiciled where it is incorporated [2], But as has been pointed out by Dicey in his 'Conflict of Laws' that a trading corporation may have or must have its domicile where its principal place of business is situate but in case of other corporation its domicile is at the place where its functions are discharged [3] It has also been held in *New York Life Insurance Co* v *Public*

1 (1955) 1 S C R 697 1954 S C A 1305 : 3 *See* Dicey Conflict of Laws 5th Edn 1955 S C J 4 1955 S C 36 at p 39 136
2. *Gasque* v *I R C* (1940) 2 K. B 80

Trustee, that a company incorporated in the United States having an office in London where policies issued in England were payable may have two domicils for the purposes of jurisdiction [1]

(f) Carrying on the business of insurance, meaning of—The Insurance Act, 1938, means by insurance business, effecting contracts of insurance When the definition of "insurer" in section 2 (9) (6) refers to any body corporate carrying on the business of insurance, the implication is that the body corporate is effecting contracts of insurance Once there has been a cancellation of registration the company cannot effect any new contracts of insurance Therefore, a company cannot be deemed to be carrying on business within the meaning of that expression in section 2 (9) of the Act even after there has been a cancellation of registration [2] But in *Smith* v *Anderson*[3] and *Central India Mining Co* v *Societe Colonale Anverseise*,[4] it has been said that a company would be carrying on business so long as there were liabilities still remaining In the Madras decision it has also been said that the phrase "carry on business" occurs in several enactments and has to be construed according to the context in which it is used and the general tenor of the enactment in which it occurs It may be construed in one way for the purpose of section 20 of the Civil Procedure Code and in a different way for purpose of income-tax See also *Liquidators of Pursa Ltd* v *Commissioner of I T*,[5] *Narain Swadeshi Weaving Mills* v *Commissioner of E P T* [6] and *Executors of the Estate of Lala Shankar Sah* v *Commissioner of I T* [7]

6 Insurance Company—To be an "insurance company" within the meaning of the definition under section 2 (8) of the Insurance Act, 1938, it must first be an 'insurer' within the meaning of the definition under section 2 (9) of the Act and next it may be a company, association or partnership (i) which may be wound up under the Indian Companies Act 1913, or (ii) to which the Indian Partnership Act, 1932, applies The Indian Companies Act, 1913, has been replaced by the Companies Act (I of 1956) Although the latter Act is both a consolidating and amending Act but the changes made therein are so far-reaching and wordings of certain sections are so different that it would not be safe to rely upon the authorities on the previous Act in interpreting those provisions of the present Act Under section 2 (21) of the Companies Act, 1956, insurance company has been defined to mean a company which carries on the business of insurance either solely or in conjunction with any other business or businesses

Under sub-section (2) of section 11 of the Companies Act, 1956, corresponding to section 4 of the Indian Companies Act, 1913, it has been provided, 'No company association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its objects the acquisition of gain by the company, association or partnership or the individual members thereof unless it is registered as a company under this Act or is formed in pursuance of some other Indian law ' Any company association or partnership of firm contravening this section becomes an illegal association and there cannot be any cause of action on the basis of an illegal

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1 (1924) 2 Ch 101 ; but see *Udny* v *Udny* (1869) L R I S C and Div 441 where it has been said that a person cannot have two domiciles at the same time

2 *Liverpool Fire & General Insurance Co Ltd* v *Foster & Ross Chartered Accountants* I L R (1959) Mad 681 : 72 M L W 302 : (1959) 2 M L J 104 1959 Mad. 336 ; *see also* 1960 S C 971 *post*

3 (1880) 50 L J Ch 39 15 Ch D 247

4 (1920) 1 K B 753 89 L J K B 769

5 1954 S C 253

6 1955 S C 176

7 (1915) 13 I T R 500 Lah

association[1] The object of the section has been explained in *Smith* v *Anderson*,[2] where it has been observed that the section intends a public mischief to be redressed when large trading undertakings are carried on by large fluctuating bodies and persons dealing with them do not know with whom they are contracting and hence may be put to great difficulty and expense

Where an association of more than twenty persons is formed in contravention of section 11 (2) of the Companies Act and a claim is made by some members of such illegal association against another member on the footing that the association should be treated as legal in order to give rise to a liability to render accounts in respect of the transactions of the association, such a claim is clearly untenable Further, the analogy of section 69 (3) (*a*) of the Partnership Act, 1932, does not apply to the case as under that Act an unregistered firm is not illegal, there is no direct compulsion that a partnership firm must be registered though the disabilities consequent on non-registration may be extremely inconvenient

It is to be noted that the prohibition contemplated under section 11 (2) of the said Act applies to a company, association or partnership carrying on a business which has for its object the 'acquisition of gain' but it will not apply to charitable, religious, scientific or other association which does not have the object of 'acquisition of gain'[4] The expressions "business" and "acquisition of gain" indicate undertakings of a commercial nature[5]

(*a*) *Hindu joint family business* —An association of more than twenty persons carrying on business for gain is only permissible if it is a Hindu joint family business Such an association would be illegal even if it is a partnership of two or more joint families as sub-section (3) of section 11, Companies Act, 1956, corresponding to sub-section (3) of section 4 of 1913 Act, in terms indicates It is not correct to say that when two or more joint families represented by their *kartas* enter into a partnership the number of members for the purpose of section 11,[6] would be the *kartas* and not the other members of the joint family represented by their *kartas* Such a partnership of *kartas* would be illegal if the number of adult members of the joint family exceed twenty[7]

(*b*) *Shareholder of company and partner of partnership firm, positions of*— The position of shareholders in a company is not analogous to that of partners *inter se*' Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners Such is however, not the case of a company which stands as a separate juristic entity distinct from the shareholders[8]

(*c*) *Non-applicability of section 11 of the Companies Act, 1956, to foreign companies* —A company incorporated outside India is a 'body corporate' and is not a "company' within the meaning of section 3 of the Act and hence section 11 of the Act will not apply to such a company[9]

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1 *Kumarasami Chettiar* v *Chinnathambi Chettiar* I L R (1951) Mad 593 (1950) 2 M L J 453 1951 Mad 291

2 (1880) 15 Ch D 247

3 *Badri Prasad* v *Nagarmal* 1959 S C J 394 1959 S C A 463 1959 S C 559 (1959) 29 Com Cas 229

4 *Inland Revenue Commissioners* v *Korean Syndicate* (1920) 1 K B 598

5 *Armour* v *Liverpool Corporation* (1939) 1 All E R 371

6 S 4 of the 1913 Act

7 *Shyamlal* v *Madhusudan* 1959 Cal 380 *see also Nyalchan* v *Lalit* I L R (1938) 2 Cal 368 1939 Cal 187

8 *Bacha F Guzdar* v *Commissioner of I T* 1955 S C R 876 1955 S C J 68 1955 S C A 675 1955 S C 74 (1955) 25 Com Cas 27

9 For definition of 'body corporate' *see* S 2 (7) of the Companies Act 1956

स्टेशन रोड, बीकानेर

(*d*) *Companies under the Companies Act*, 1956 —Four kinds of companies have been defined in section 3 of the Act, thus—

(*i*) 'company' means a company formed and registered under this Act or an existing company as defined in (*ii*) below

(*ii*) 'existing company' means a company formed and registered under any of the previous companies laws specified below

(*a*) Any Act or Acts relating to companies in force before the Indian Companies Act, 1866 (X of 1866) and repealed by that Act,

(*b*) The Indian Companies Act, 1866 (X of 1866),

(*c*) The Indian Companies Act, 1882 (VI of 1882),

(*d*) The Indian Companies Act, 1913 (VII of 1913),

(*e*) The Registration of Transferred Companies Ordinance, 1942 (LIV of 1942), and

(*f*) Any law corresponding to any of the Acts or the Ordinance aforesaid and in force in the merged territories or in a Part B State or any part thereof, before the extension thereto of the Indian Companies Act, 1913 (VII of 1913),

(*iii*) "private company" means a company which, by its articles —

(*a*) restricts the right to transfer its shares, if any, and

(*b*) limits the number of its members to fifty not including—

(*i*) persons who are in the employment of members of the company, and

(*ii*) persons who having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, and

(*c*) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member,

(*iv*) "public company" means a company which is not a private company

Private company and public company as defined in section 2 (16) of the Insurance Act, 1938, will have the same meanings as defined above in section 3 of the Companies Act 1956

(*e*) *Company or association or partnership which may be wound up under the Companies Act* —A company once incorporated under the Companies Act can not be put an end to except through the machinery of a winding up,[1], or it can also be put an end to by its name being struck off the register by the Registrar of Companies under the provisions of section 560 of the Act. Section 425 of the Act prescribes modes of winding up thus (*a*) by the Court,

1 *Princess of Reuss v Bos*, (1871) L R 5 H L 176.

or (*b*) voluntary, or (*c*) subject to the supervision of the Court Ordinary a company registered under the Companies Act can be wound up through any of the modes of winding up mentioned in section 425 , but any unregistered company may be wound up under the Companies Act and all the provisions of that Act with respect to winding up shall apply to such unregistered company, with the exceptions and additions mentioned in sub-sections (2) to (5) of section 583 of the Act An "unregistered company' for the purposes of winding up shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court [1] Of the three modes of winding up, only the winding up by the Court is available to the unregistered company , and circumstances in which such a company may be wound up are as follows

(*a*) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs,

(*b*) if the company is unable to pay its debts,

(*c*) if the Court is of opinion that it is just and equitable that the company should be wound up [2]

Under section 270, Companies Act, 1913,[3] the court has jurisdiction in a proper case to order the winding up of a partnership, association or company under section 271 (section 583) if and only if at the time when the petition for winding up is presented, it consists of more than seven members [4] The High Court has jurisdiction to wind up an unregistered foreign company irrespective of the number of its members [5] Where a company has ceased to exist by an Act of the country by whose Acts and under whose law it was made a juristic entity, it must accordingly be treated as non-existence by all courts administering English Law [6] It is to be remembered that Part IX of the Companies Act, 1913 (Part X of the Companies Act, 1956) is intended to cover the cases of those companies which can legitimately remain unregistered In other words it provides that companies consisting of not more than ten members in cases of banking companies and not more than twenty members in case of other companies can be wound up Part IX (Part X of the present Act) therefore does not contemplate that a company formed contrary to the provisions of section 4 (section 11 of the present Act) can also be wound up through Court [7] For examples of unregistered companies which have been ordered to be wound up under the English Companies Act, see, *Re South London Fish Market*,[8] *Re Barton-upon Humber Water* [9] *Re Oriental Bank Corporation* [10] *Re Bank of South Australia*,[11] *Re Mercantile Bank of Australia*,[12] *Re Great Britain Mutual Life Assurance Society* [13] *Masonic & General Life Assurance Co* v *Sharpe*,[14] *Re Victoria Society* [15]

(*f*) *Company, association or partnership to which the Indian Partnership Act, 1932, applies* —The Indian partnership law was contained in Chapter XI of the Indian Contract Act (Act X of 1872) That chapter was repealed and the Indian Partnership Act, 1932 (IX of 1932) was enacted wherein the law of

1 *See* S 582 (6) of the Act
2. *See* S 583 (3) and (4) of the Act
3 *See* S 582 of the New Act
4 *V E R M Chettyar Firm* v *J Hormasji* 8 Rang 658 131 I C 497 1931 Rang 77
5 *Strauss & Co Ltd In re* 38 Bom L R 1080 167 I C 485 1937 Bom 15 *see* also *Travancore National & Quilon Bank In re* 1938 M W N 1313 183 I C 353 1939 Mad 318
6 *Dawan Kissen Kabushaki Kaisha* v *Shang Fee* 54 M L W 610 1941 A W R 69 196 I C 414 1941 P C 88
7 *Raghubar Dayal* v *Sarrafa Chamber* 1954 A L J 569 (1954) 24 Com Cas 388, 1955 All 555
8 (1888) 39 Ch D 324
9 (1889) 42 Ch D 585
10 (1884) 54 L J Ch 481
11 (1895) 1 Ch 578
12 (1892) 2 Ch 204
13 (1880) 16 Ch D 246
14 (1889) 1 Ch 154
15 (1913) 1 Ch 167

partnership had been embodied This Act is mainly based on the English Partnership Act and in it are embodied many of the provisions of the English Act

"Partnership" has been defined in section 4 of the Act to be the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name' Section 6 of the Act further provides that in determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together The three elements of the definition of partnership, namely, the agreement of the persons, the sharing of profits of the business and the carrying on of the business by all or any of them acting for all must be present to constitute a partnership [1] When the test as laid down above is satisfied the company, association or partnership, if not incorporated and its members not exceeding twenty, would attract the Indian Partnership Act, 1932

(g) *Insurance Company' as defined in the English Insurance Companies Act, 1958* —Section 33 (1) has interpreted the expression "insurance company' to mean a person or body of persons (whether incorporated or not) carrying on insurance business

7 Other companies in definition clauses

(*a*) *'Banking company' and 'company, clause (4-A)*—Under the Banking Companies Act (X of 1949) a 'banking company' is interpreted to mean any company which transacts the business of banking in India But a company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of section 5 (*c*) of the Act Again the word banking has been interpreted to mean the accepting for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise [2]

The essential characteristic of a 'banking company' is its power to receive deposits repayable in the manner indicated in section 5 (1) (6) of the Act In the absence of such power mere power of granting loan does not make company a banking company [3] Even when a banking company is prevented from accepting deposits under a scheme of arrangement sanctioned by Court it is still a banking company [4] The definition of banking in section 5 (1) (6) makes it clear that acceptance of deposits is *sine qua non* to constitute banking business A Samajam constituted of 15 members and carrying on money lending business would not be banking company compulsorily registrable under the Companies Act when there was no evidence to show that it was formed for accepting deposits or was actually accepting deposits at any time [5]

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1 See *Cox v Hickman* (1860) 8 H L C 268 *Sutton & Co v Grey* (1894) 1 Q B 285 *Walker v Hirsch* (1884) 27 Ch D 460 *King & Co v Whichelow* (1895) L J Q B 801 C A *Ross v Parkyns* (1875) 20 Eq 331 *Ex parte Delhasse* (1878) 7 Ch D *Raghunath v Official Assignee* 28 C W N 31 *Ramanadan v Hormasjee* 51 Bom 31

2 *See* S 5 (1) (6) of the Act

3 *Mahalaxmi Bank Ltd v Registrar of Companies W B* 65 C W N 99 1961 Cal 666 (1961) 31 Com. Cas 287

4 *Kalipada Sinha v Mahalaxmi Bank Ltd* 1961 Cal 189

5 *S Samajam v O Kalyani*, 1953 Ker L T 335 1954 Trav Co 50

To be a banking company within the meaning of the definition it is not necessary that it should transact the banking business at any particular point of time [1]

(b) *Investment company* —The expression 'investment company' in clause (10-A) of section 2 of the Insurance Act means a company where principal business is the acquisition of shares, stocks, debentures or other securities The word "investment" is not a word of art but has to be interpreted in a popular sense It is not capable of legal definition but a word of current vernacular [2] The expression 'investment' ordinarily connotes the laying out of money in such a manner that it may produce a revenue The common way of doing so is by the purchase of shares, stocks, securities or other property Even "application of money in the purchase of some property from which interest or profit is expected and which property is purchased in order to be held for the sake of the income which it will yield" [3] The words 'invest' and 'investment' have been used in the Companies Act in the business sense of laying out money for interest or profit [4]

(c) *"Share"* —The 'share' has been defined to mean in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied [5]

(d) *"Stock"* —Stock differs, in principle, from shares in the following respects

(1) Stock need not be numbered while shares have to be numbered, and

(2) Stock need not be divided into equal parts but may be divided into fractions, *e g*, assuming that the stock arises from shares of £ 1 each a stockholder may hold £ 1, 12 s 6 *d* worth of stock [6]

(e) *"Debenture"* —The word 'debenture' has been defined to include debenture stock, bonds and other securities of a company, whether constituting a charge on the assets of the company or not [7] This definition has been brought in line with the definition of 'debenture' given in the English Companies Act, 1948 The Company Law Committee has observed in its Report at para 27 thus, "A debenture means a document which either creates or acknowledges a debt Ordinarily a debenture constitutes a charge on the undertaking of the company or some part of its property, but there may be debentures without any such charge, and under the law it is not necessary that the debentures should create a charge" [8] The word 'debenture' is not either in law or commerce a strictly technical term or what is called a term of art but at the same time it has no precise legal definition [9] But in *Edmonds* v *Blaina Co* Chitty, J described the meaning of the term 'debenture' thus "The term imports a debt—an acknowledgment of a debt—and speaking of the numerous and various forms of instruments which have been called debentures without anyone being able to say that the term is incorrectly used I find that generally —

1 *K V S Vasan Bros* v *Official Liquidator* I L R (1951) T C 398 1952 Ker L T 633 1952 T C 170 *see* also *Jwala Bank Ltd* v *Shitla Parshad Singh* 1950 All 309

2 *Inland Revenue Commissioner* v *Desoutter Bros Ltd* 1946 All E R 58

3 *Re Wragg* (1919) 2 Ch 58

4 See *Wamanlal* v *Scindia Steam Navigation Co*, 1944 Bom 131

5 S 2 (46) of the Companies Act, 1956

6 *See* Palmer's Company Law 20th Edn p 271

7 *See* S 2 (12) of the Companies Act 1956

8 See *Pearl Assurance Co Ltd* v *West Midland Gas Board* (1950) 2 All E R 844

9 *Levy* v *Abercorris Co* 1888 (37) Ch D 260 *British India etc Co* v *I P C* (1881) 7 Q B D 165

if not always—the instrument imports an obligation or covenant to pay This obligation or covenant is, in most cases at the present day, accompanied by some charge or security "[1] In modern commercial usage a debenture means an instrument issued by the company, normally, but not necessarily, called on the face of it a debenture, and providing for the payment of, or acknowledging the indebtedness in, a specified sum, say Rs 1,000, at a fixed date, with interest thereof It usually, but not necessarily, gives a charge by way of security, and is often, though not invariably, expressed to be one of a series of like debentures But the term, as used in modern commercial parlance, is of extremely elastic character, for—

(1) it is sometimes used, both by lawyers and businessmen, to describe an instrument which is not called, on the face of it, a debenture, *e g*, a bond,

(2) it is used of an instrument which is not one of a series A single debenture may be issued to one man,

(3) it is not the less a debenture because—

(*a*) it is not under seal, or

(*b*) it does not contain a charge, or

(*c*) it does not provide for payment at any fixed date but only in the event of winding up or in some contingency, or

(*d*) because there is no personal liability on the company to pay but the company charges its property as security for the debt of another person [2]

(*f*) *Debenture and debenture stock*—There are differences between a debenture and a debenture stock The main differences are—

(*i*) terminological, a 'debenture' is the description of an instrument, but a 'debenture stock' is the description of a debt or sum secured by an instrument In the words of Lord Lindley, it is "borrowed capital consolidated into one mass for the sake of convenience",

(*ii*) debenture stock is generally created by a trust deed which contains a covenant for the payment either at a fixed date or in certain events, of a specified capital sum and also interest and gives to the trustees security, by way of mortgage or charge, as in a debenture trust deed

(*iii*) a debenture is always for a fixed sum which is transferable as an entirety but debenture stock can be transferred in fractional amounts

But in the matter of security, of payment of interest and of transfer, debenture stock differs hardly from debentures [3]

8 **Securities**—There are two classes of securities defined in the Insurance Act, 1938, *viz*, (*i*) approved securities defined in section 2 (3), and (*ii*) Government security defined in section 2 (7) of the Act A security is any thing that makes the money more assured in its payment or more readily recoverable as distinguished from *e g* a mere "I O U" which is only evidence of a debt [4] The expression "other securities" mentioned in clause (10-A) of the Insurance Act should be taken apparently to have been used in

1 (1887) 36 Ch D 219
2. Palmer's Company Law 20th Edn pp 367 368
3 *See* Palmer op cit p 369
4 *Chhatmal* v *Noorbhay* [07 I C 213; 1928 Sind 89

a sense slightly in excess of its strict legal meaning of "approved securities" and hence such securities may also include shares [1]

'Approved securities' within the meaning of clause (3) of section 2 of the Act are (i) Government securities and other securities (*a*) charged on the revenues of, or (*b*) guaranteed fully as regards principal and interest by, the Central or any State Government, (ii) debentures or other securities for money issued under the authority under any Central Act or State Act by or on behalf of (*a*) a port trust (*b*) municipal corporation, or (*c*) city improvement trust, in any Presidency town Hence, Calcutta Corporation Debentures and Loans, Calcutta Port Trust Debentures and Loans, Calcutta Improvement Trust Debentures and Loans, Bombay Municipal Loans, Bombay Port Trust Loans Madras Port Trust Loans, and Madras Corporation Loans are approved securities, (iii) shares of a corporation established by law and where the re-payment of principal and payment of dividend are fully guaranteed by the Central or the State Government, (iv) securities (*a*) issued by the Government of any Part B State or (*b*) their principal and interest are guaranteed fully by such Government, and such securities are specified by the Central Government by notification in the official Gazette as 'approved securities' for the purposes of the Insurance Act, 1938, and (v) (1) securities for such purposes and period and subject to conditions prescribed (*a*) when guaranteed fully with regard to principal and interest by a Provincial Government in Pakistan, or (*b*) charged on the revenues of any part of that Dominion, and (*2*) debentures or securities for money issued by or on behalf of the trustees of the port of Karachi subject also to the limitations aforementioned

Pakistan securities above referred to will be treated as "approved securities" under Rule 10A of the Insurance Rules, 1939, in the case of insurers incorporated or domiciled in India—

(*a*) for the purposes of sections 7, 98 or 73 of the Insurance Act, 1938, if such securities had been deposited with the Reserve Bank of India pursuant to the said Act before 15th August, 1947, and continue to be so deposited with the said bank since that date, and

(*b*) for the purposes of sections 27 and 27A of the said Act, if such securities had been acquired by an insurer or a provident society before 15th August, 1947, and continued to be held since that date by the insurer or the provident society aforesaid

"Government security" under the Public Debt Act, 1944, means (*a*) a security created and issued whether before or after the commencement of Act by the Central or a State Government for the purpose of raising a public loan and having one of the following forms namely, (*i*) stock transferable by registration in the books of the Reserve Bank, or (*ii*) a promissory note payable to order, or (*iii*) a bearer bond payable to bearer or (*iv*) a form prescribed in this behalf, (*b*) any other security created and issued by the Central or State Government in such form and for such of the purposes of this Act as may be prescribed [2] A promissory note above referred to also includes a treasury bill [3]

9 Managing Agent —There is difference in the definition of 'managing agent given in section 2 (26) of the Companies Act, 1956, and that given in section 2 (13) of the Insurance Act, 1938 But the definition in both the Acts has common elements in that in both cases (*i*) a managing agent may be individual,

1 See *Re Rayner*, (1904) 1 Ch 176
2 S 2 (2) of the Public Debt Act, 1944
3 S 2 (4) of the Public Debt

firm or body corporate though in the latter Act the words 'person' and 'company' have been used for 'individual' and 'body corporate' unlike in the Companies Act, (*ii*) such agent is entitled to the management of the whole affairs of a company by virtue of an agreement with the company and (*iii*) such agent may include any person (individual) firm or company (body corporate) occupying such position by whatever name called The main difference between the two definitions in the said two Acts may be noticed thus Under the Companies Act, a managing agent is entitled to (*i*) the management if not the whole but substantially the whole of the affairs of the company, (*ii*) such management may be derived by virtue of the company's memorandum or articles of association Under the Insurance Act, (*i*) a Managing Agent's power of management of the affairs of the company is subject to the control and direction of the directors subject to any exceptions provided for in the agreement But the latter difference, though marked in the definition clause of the Companies Act loses its importance when it is read with section 368 of that Act which section subjects the managing agent to superintendence, control and direction of the Board of Directors (*ii*) In the explanation to clause (13) of section 2 of the Insurance Act it has been said that a person, occupying the position of a managing agent calling himself manager or managing director, shall be regarded as managing agent for the limited purposes of section 32 of the said Act

10 Manager —Under the Companies Act, 1956, the word 'manager' has been defined to mean an individual (not being the Managing Agent) who, subject to the superintendence, control and direction of the Board of Directors has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director, or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not [1] The same definition of the word 'manager' has been given under section 2 (12) of the Insurance Act, 1938

11 Officer —The word 'officer' is defined in the Companies Act, 1956 to include any director, managing agent, secretaries and treasurers, manager or secretary, and also includes—

(*a*) where the managing agent, the secretaries and treasurers or the secretary is or are a firm any partner in the firm,

(*b*) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate,

(*c*) where the secretary is a body corporate any director, managing agent secretaries and treasurers or manager of the body corporate,

but save in sections 477, 478 539, 543, 545, 621, 625 and 633 does not include an auditor [2]

The same definition has been adopted of the word officer' in section 2 (12) of the Insurance Act 1938

(*a*) *Managing Director, who is* —To be the managing director of a company registered under the Companies Act, 1956, he must possess two qualifications, namely, he must be (*i*) an individual, and (*ii*) a director Next he will have the substantial powers of management as entrusted to him Lastly, he exercises

1 *See* S 2(24) of the Act

2. *See* S 2(30) of the Act

powers under any agreement or memorandum or Articles of the company or under resolutions of the company or of the Board of Directors and he must be under the superintendence, control and direction of the Board of Directors Further, substantial powers of management of a managing director shall not include the power to do administrative acts of a routine nature, such as the power to affix the common seal of the company to any document, or to draw and endorse any cheque on the account of the company in any bank, or to draw and endorse any negotiable instrument, or to sign any certificate of share, or to direct registration of transfer of any share, when such powers are so authorised by the Board to him to perform A managing director will also include a director occupying the position of a managing director, by whatever name called [1]

12 Insurance business —The expression 'insurance business' has not been defined in the Act But in the definition clause insurance business has been classified into four broad groups, namely, (1) 'fire insurance business' which is defined in clause (6-A), (2) 'life insurance' which is defined in clause (11), (3) 'marine insurance business' which is defined in clause (13-A), and (4) 'miscellaneous insurance business' which is defined in clause (13-B) of section 2 of the Insurance Act, 1938 Under clause (6-B) of section 2 of the Act, fire, marine or miscellaneous insurance business has been given a name 'general insurance business' which is also defined in the said clause

There is difference between 'insurance' and 'insurance business' The former is a matter of contract which has its origin in, and derives its incidents from, the laws, usages and customs of commercial nations, whereas the latter is the organisation through which contract of insurance as made is carried on for profit and this organisational aspect of the insurance is the subject matter of the Insurance Act, 1938, which purports to regulate and control such organisations Again speaking generally, an organisation which writes insurance is an insurance company, whether doing business as a stock, mutual or mixed company or individual or firm, and regardless of the type of casualty or risk insured against Such organisations engage themselves in the business of making contracts of insurance These organisations when considered in the light of the Insurance Act 1938, include them who carry on those kinds of insurance mentioned in the Act and within the purpose of the said Act or rule prescribed thereunder

13 "Fire insurance business" —This expression has been defined in section 2 (6-A) of the Insurance Act 1938, to mean the business of effecting contracts of insurance against loss by or incidental to fire and other occurrence customarily included among the risks insured against in fire insurance policies, but it will not mean the business of effecting fire insurance contracts when it is done incidentally to some other class of insurance business

A policy of fire insurance, as its name indicates, is intended to protect the assured against loss caused by fire In modern practice, the protection of the policy normally extends to losses caused by events, such as lightning and certain kinds of explosion which frequently are the cause of a fire, but may occur without a fire resulting If a fire results the policy is plainly applicable unless an exception became operative, and there is no commercial advantage in limiting the insurance by reference to such a fortuitous standard [2]

Fire insurance or a fire insurance policy in the sense of its subject-matter is a contract of indemnity by which insurer for a consideration agrees

1. *See* S 2(26) of the Companies Act 1956 Simonds Edition pp 303-304
2. Halsbury Laws of England, Vol 22,

to indemnify insured against loss of, or damage to, property by fire Fire policies may generally be (*i*) open policies where the policy does not fix the liability, (*ii*) valued policies, where the value of the property and the amount payable in case of loss are fixed by the terms of contract, and (*iii*) floating policies, where it is intended to cover property or value cannot well be covered by specific insurance because of the fact that the property is changing in quantity or location

Fire insurance, loss by theft, whether recoverable —Where an independent cause operates to produce the damage, the fact that the peril insured against has given occasion for the operation of the independent clause does not constitute the damage a damage by the peril insured against The plaintiff in a contract of fire insurance, which essentially is a contract of indemnity, has to prove the loss actually suffered by him as a result of fire The loss occasioned by theft cannot be attributed to a fire which only provides the opportunity for intervention as an entirely independent cause of damage [1]

Open policy, assured to prove actual amount of loss and valued policy —Where the policies were not valued policies, unless the assured proves the actual amount of his loss suffered no decree can be passed in his favour [2] Again, insurance does not necessarily give a perfect indemnity, but gives sometimes more and sometimes less This may happen in several cases, but particularly in the case of a valued policy, where the measure of indemnity is fixed by the value irrespective of the appraisement made actually as at the date of the fire in consideration of the market rate, loss of commission and charges or value of the brokers, services The position in the event of loss, in fire insurance contract, must depend on the terms of the contract and on the value as appraised as determined by the terms of the contract, and similarly the apportionment of that value between the broker and his client must depend on the respective rights of property which the parties had in the property at the date of the fire [3]

Insurance of goods whether includes profits —The subject matter of an insurance must be properly described Thus if the subject-matter is a ship, the policy must so describe it and conversely, if it is freight which is insured that must be so described as the subject-matter of the insurance Similarly, by English Law at least an insurance described as an insurance on goods, does not cover profits So also where a broker in his own name has insured merchandise belonging to his client the right to recover must be based on an insurable interest in the goods themselves, whether a special property like a lien or the general property, or some other insurable interest, such a liability in case of loss of the goods Where a policy does not cover expected profits, the broker cannot claim to deduct commission which he would have earned if the merchandise had not been destroyed in case when such merchandise is destroyed [4]

When the goods were described in the policy as follows ' Piecegoods of every description and/or yarn and/or textile fabrics in pressed bales and/or in case the property of the insured or held by him in trust or on commission for which he is responsible " On the destruction of the goods by fire the words

1 *Ghaki Mal Hukum Chand* v *Great American Insurance Co Ltd* 62 Punj. L R 241 1960 Punj 523

2. *Chandumull Jain* v *General Assurance Society Ltd* 63 C W N 367 1959 Cal 558 *see also Chandumull* v *General Assurance Society Ltd* 67 C. W N 69

3 *T T Maurice* v *Goldsbough Mort and Co* 183 I C 106 1939 P C 195 *see also Chandumull* v *General Assurance Society Ltd* 67 C W N 69

4 *T T Maurice* v *Goldsbrough Mort and Co* 188 I C 106 1939 P C 195

of the policy were construed to be held that the insurer was liable both to the extent of the lien of the assured on those goods as well as to the whole extent of his legal liability to the true owner of these goods and the qualifying words "for which he is responsible had restricted the insurer's liability only to the extent to which the assured who was liable to third parties Further that in the event of its being proved that he was not liable to the true owners of the goods the liability would be restricted to the lien of the assured himself on these goods for any moneys due to him in respect of the said goods [1] –

Duty of assured to disclose material facts which he is deemed to know Agent's knowledge —On the question of the duty of the assured to disclose material facts which the assured is in law "deemed to know" the following position should govern the case

(1) The assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him If the assured fails to make such disclosure, the insurer may avoid the contract

(2) The term "circumstance" in this connection includes any communication made to, or information received by, the assured

(3) Except circumstances which the assured is under general principles of law, not bound to disclose, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer—

(*a*) Every material circumstance which is known to himself and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have communicated to, him , and

(*b*) Every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to his agent

(4) In the case of loss of the subject-matter of the insurance, an agent, whose duty it is to keep his principal informed, is bound to send him information of the loss by telegram or telephone when it is practicable to do so This is in every case a question of fact and must depend on the circumstances of the particular case In any case reasonable means of communication must be availed of though it is not necessary that extraordinary steps need be taken or vigilance of extraordinary nature should be exercised

(5) The duty to disclose continues till the contract is concluded and a contract is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not [2]

"Contract uberrima fides" —A contract of insurance is contract *uberrima fides* and there must be utmost good faith on the part of the assured This imposes a duty and an obligation on the assured to make a full disclosure of all material facts which would affect the mind of the insurer whether to accept

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1 *Azimuddin* v *Hercules Insurance Co* 54 Bom L R 773 1953 Bom 61

2 *Vijaya Kumar* v *New Zealand Insurance Co Ltd* 56 Bom L R 341 1954 Bom 347 (1954) 24 Com Cas (Ins) 49

the risk or not and on what terms A false answer or non-disclosure or concealment of a material fact will avoid the policy, even though there is no fraud and the concealment is innocent [1] In insurance contracts, the principle of *"caveat emptor"* has no place, as in such cases ordinarily, the risk undertaken by the insurer can only be learnt from the representations made by the intending insured, and non-disclosure of a material factor is regarded as fatal to the validity of the transaction Upon these principles, there is a legal obligation cast upon the party proposing the insurance, to communicate, not only every material fact of which he had actual knowledge, but he is also deemed to know every material fact of which he ought, in the ordinary course of business, to have knowledge [2]

Description of the subject-matter of insurance, basis of contract —In a fire insurance contract the subject-matter of the insurance forms the basis of the contract and proper description of the subject-matter of the contract would certainly be essential for the purpose of identification of the goods All that is required of the assured is that the description should be adequate, that is, it must substantially describe the property which is to be insured A statement as to the ownership of the goods or the nature and extent of the interest of the assured in the subject matter cannot be called 'description" of the goods insured Even the assured is not required spontaneously to disclose his title to the property insured [3]

Warranty in fire insurance policy —Warranties in fire insurance policies are construed strictly Thus, where the warranty in a policy of fire insurance is that "smoking and cooking be strictly prohibited in or about the said premises except in places specially set apart for such purposes only" the warranty can be said to have been strictly complied with when the assured posts warning notices and strictly prohibits smoking in and around the places where the fire occurred The mere fact that some employee might have in spite of the warning and prohibiton of the assured, smoked a *biri* or a cigarette on one occasion does not amount to a breach of the warranty [4]

A policy of insurance can be vitiated by any breach of warranty, fraud or misrepresentation But failure on the part of the assured to disclose the nature of his interest in the goods cannot be said to amount to a breach of warranty All that is required is that the assured should have insurable interest in the subject-matter Even the interest of a bailee is sufficient to establish an insurable interest and an unpaid vendor of the goods has an insurable interest in the property which is the subject-matter of the contract of insurance [5]

Insurable interest —A contract of fire insurance, like all other contracts of insurance requires an insurable interest in the subject-matter of the insurance to support it in the absence of such an interest the contract becomes a wagering one Finch, J in *Stockdale* v *Dunlop* [6] has observed thus 'if there be a right in or against the property which some court will enforce , a right so closely connected with and so much dependent for value upon the continued existence of it alone, as that a loss of the property will cause pecuniary damage to the holder of the right against it he has an insurable interest" Generally speaking a person usually has an insurable interest in the subject-matter insured where he will derive pecuniary benefit or advantage from its preservation or

1 *Pohiri Nendon Goneems* v *Ocean Accident & Guarantee Corporation Ltd* 1960 Cal 66

2. *Lakshmi Insurance Co Ltd* v *Bibi Padmawati* 63 Punj L R 254 1961 Punj 253 I L R (1961) 1 Punj 353

3 *Vijaya Fire* v *New Zealand Insurance Co Ltd* 56 Bom L R 341 1954 Bom 347

4 *Bhattacharjee* v *Sentinel Assurance Co Ltd* 1955 Cal 594

5 *Upakumar* v *New Zealand Insurance Co Ltd* 56 Bom L R 341 1954 Bom 347

6 (1810) 6 M and W 224

will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against [1] But the precise nature, extent or value of the interest is irrelevant An equitable or beneficial interest of any kind is as effective for this purpose as a legal interest Interest is not restricted to ownership, it may arise under a contract relating to the subject-matter or it may be founded upon lawful possession Thus, a finder who takes the object which he finds into his possession has an insurable interest in it Similarly, a defeasible or precarious interest is capable of supporting an insurance But it is not clear whether the statutory provisions which require the names of persons interested to be inserted in policies apply to fire insurance [2]

It has also been said that the risk of incurring legal liability in consequence of the happening of an event is an insurable risk Thus all insurers upon a valid policy have an insurable interest which entitles them to reinsure or effect a counter-insurance on the subject-matter of the original insurance The general rule of law is that one who effects an insurance against the happening of an event need not, in the absence of specific inquiry, disclose the nature of his interest in that event, but where the interest of the assured depends upon the preservation of property and is not a right, legal or equitable, in the property itself, but arises incidentally or from some contract in relation to the property, the risk must be more particularly described, and in so describing the risk the assured must necessarily specify the nature of his interest in the property [3]

Insurable interest is not synonymous with legal interest Thus, an interest under agreement to purchase is an insurable interest [4] A warehouseman who has assumed the obligation to insure the goods while in his possession has an insurable interest [5] Even the interest of a bailee is sufficient to establish an insurable interest and an unpaid vendor of goods has an insurable interest in the property [6] Similarly, a husband has an insurable interest in his wife's property and a wife, in turn, has an insurable interest in the property of her husband [7] So also a landlord may insure his rent which he may lose through the destruction of his premises,[8] a tenant of premises has an insurable interest founded upon the beneficial enjoyment of the premises, which he loses in the event of their destruction,' so also a tenant renting a furnished house has an insurable interest in the furniture [10] Likewise a creditor, whose debt is secured by legal or equitable mortgage upon any specific property, has an insurable interest in that property [11] So also a mortgagor has insurable interest in the property mortgaged [12] A bankrupt remaining in possession of his estate has an insurable interest in it [13] A man may also insure the profits which he expects from some undertaking or adventure or from the carrying on of a business [14]

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1 Corpus Juris Secundus Vol 44 p 870
2. Halsbury's Laws of England Simond's Edn Vol 22 pp 310-311
3 MacGillivray Insurance Law Vol 1 5th Edn, pp 380-381
4 *Guana Sundaram v Vulcan Insurance Co Ltd* 9 Rang 452 : 134 I C 221 1931 Rang 210
5 *T T Mauser v Goldsbrough Mort & Co* (1939) A C 452.
6 *Pegu Timber Assc Zealand Insurance Co Ltd* 1951 Bom 347
7 *Goulstone v Royal Insurance Co* (1858) 1 F & F 276 *Griffiths v Fleming* (1909) 1 K B 805 C A at p 815
8 *Macaura v Northern Assurance Co* (1925) A C 619
9 *Castellain v Preston* (1883) 11 Q B D 380 C A at p 398
10 *Trotter v Watson* (1869) L R 4 C P 434 at p 444
11 *Westminster Fire Office v Glasgow Provident Investment Society* (1888) 13 App Cas 699 H L at p 709
12. *North British & Mercantile Insurance Co v London Liverpool & Globe Insurance Co* (1877) 5 Ch D 569 C A at p 583
13 *Marks v Hamilton* (1852) 7 Ex 323
14 *Fuller v Glover* (1810) 12 East 124

But a shareholder in a company, even though the compay is a one-man company and he and his nominees are the only shareholders, has no insurable interest in the company s property,[1] nor has a simple creditor of a company any insurable interest in its property But a shareholder can insure the capital which he has staked on the adventure and the profits which he expects to derive from the investment Again the majority opinion in the U S is that a shareholder has an insurable interest in the company's proprty[2] A mere trespasser or squatter on land has no insurable interest So also a son has no insurable interest in the property of his father Likewise, a surety on a bond given to secure the payment of mortgage on property purchased in his wife's name has no insurable interest where he has never acquired any lien on, or control over, the property to secure his liability[3] A person who has himself no insurable interest in the property cannot insure it for his own benefit, but he may insure it on behalf of some person who has an insurable interest In this case, if, owing to the absence of any antecedent authority, ratification is necessary, it must be given before loss, ratification after loss comes too late[4]

Contract of insurance, whether can be retrospective —In order to decide whether a contract of insurance should apply to a loss which had already taken place, or, in other words that the contract of insurance should be restrospective, or again to use diffierent language, that the risk should be a past risk and not only a future risk the court must try and gather the intention of the parties and primarily the intention should be gathered from the document, i e policy, itself which is the repository of the terms of the contract It is not necessary expressly to state in a fire insurance policy that the goods are insured, loss or no loss, or whether they are in existence or not in existence Even in the absence of such words, if the court comes to the conclusion that the parties clearly intended that the insurance should be retrospective and the risk was to attach prior to the date of the insurance, the court would hold the insurance company liable notwithstanding the absence of the words to that effect Thus where *A* insured certain goods with *B* company and the cover note which was issued on 18-6-1951 stated that the goods were insured from 15-6-1951 for a certain sum mentioned therein and the goods were destroyed by fire on the evening of 16-6-1951 which fact neither *A* nor *B* company knew on 18-6-1951, *B* company was liable under the policy on the ground that the parties intended and agreed that the risk should attach from 15-6-1951 When the intention of the parties was that the risk should attach in the past and as they were ignorant whether the goods were in existence or destroyed, there was no question of mistakes which would attract section 20 of the Contract Act 1872[5] But an insurance company, by accepting the renewal of a policy of fire insurance out of time, does not take the risk of an accident having happened in the meantime unknown to itself It is not usual when stipulating for fire insurance to stipulate with reference to the past The risk to be guarded against is a risk in the future[6] An intention to make a contract of insurance retrospective must be clearly expressed, and *prima facie* an acceptance does not relate back to the date of the proposal[7]

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1 *Macaura v Northern Assurance Co. Ltd*, (19 5) A C 619

2 MacGillivray's Insurance Law Vol 1 5th Edn p 201 *See* also Halsbury s Laws of England Vol 22 Simond s Edn p 313

3 Corpus Juris Secundus Vol 44 pp 879-880

4 Halsbury s Laws of England Vol 22, p. 314

5 *Indian Trade & General Insurance Co v Bhailal* 55 Bom L R 874 : 1954 Bom 148

6 *Ram Singh v Century Insurance Co Ltd* 54 C W N 1101 : 60 Cal 332 : 142 I C 505 : 1933 Cal 170

7 *Rogers v Equitable Mutual* (1867) 103 Iowa 337

Risk, when commences —In a contract for fire insurance, the risk commences at the time as a soon as a binding contract of insurance is concluded and it is always open to the parties to the contract to come to an agreement as regards the time from which the risk will commence On the receipt of the intimation from the company by the assured that the risk was covered, there is a valid contract between the parties and it can be enforced notwithstanding the fact that no policy in the usual form had been issued and no premium had been paid [1] Ordinarily unless there is, among the conditions of the issue of the policy, an express stipulation that the policy shall not become effective until the premium has actually been paid, the policy becomes effective from the date of its signature by the agent of the company But the existence of the words in the policy that the holder of the policy had paid the company a certain sum by way of premium would not prevent the Insurance Company from asserting that the premium had not been paid [2] It is almost a common practice of all insurers, except marine, to stipulate that the contract shall not begin to take effect until the premium has been paid But even in cases where there is such a stipulation the insurers are competent to waive the condition Such a waiver may be established either by the evidence of an express agreement or may be inferred from the surrounding circumstances of the case Mere delivery of an executed policy cannot however, amount to a waiver of the condition contained in a stipulation of the nature The issue of a policy cannot be treated as a counter-offer [3] The commencement and duration of risk must be agreed If the *terminus a quo* is agreed upon, it will not as a rule be necessary that the *terminus ad quem* should be expressed The usual practice in fire burglary and accident risks is to insure for a year, and in the absence of anything to indicate the contrary, that may be taken as an implied term in the contract The duration of the risk may also be inferred from previous insurances between the same parties [4]

Construction of fire insurance policies —It is settled rule of construction of insurance policies that provisions relating to forfeiture should be construed in favour of the assured and against the company Again, another well-recognised principle is that where the computation is for the benefit of the person affected, as much time should be given as the language admits of, and where it is to his detriment, the language should be considered as strictly as possible [5] It is an axiom of interpretation when dealing with insurance companies that if there is any ambiguity in the document, it is to be construed against the company [6]

In fire insurance policies, the phrase 'civil commotion' is used to indicate a stage between a riot and civil war It has been defined to mean an insurrection of the people for general purposes though not amounting to rebellion, but it is probably not capable of any precise definition The element of turbulence or tumult is essential an organised conspiracy to commit criminal acts where there is no tumult or disturbance until after the acts does not amount to 'civil commotion' It is not, however, necessary to show the existence of any outside

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1 *Hars Kishan Das* v *Guardian Assurance Co Ltd*, 56 All 237 1934 A L J 59 14/ 1 C 301 1933 All 900

2 *U San Dun* v *New Zealand Insurance Co Ltd* 153 I C 387 1934 Rang 343

3 *Ocean Accident & Guarantee Corporation Co* v *D K Patkar* 37 Bom L R 304 156 I C 634 1935 Bom 236

4 *Eames* v *Home Insurance* (1876) 94 U S 621 *Winne* v *Niagara Fire, Insurance Co* (1883) 91 N Y 185

5 *T G Rajan* v *Asiatic Government Security Life Assurance Co Ltd* (1938) 2 M L J 1020 48 M L W 746 180 I C 156 1939 Mad 159

6 *Brindarans Debi* v *Co-operative Assurance Co Ltd* 1 L R (1944) 1 Cal 101 211 I C 450 1944 Cal 1 *Chandmull Jain* v *General Assurance Society Ltd*, 67 C W N 69

organisation at whose instigation the acts were done[1] Riot and civil commotion' clause "has two limbs—(1) insurrection, riots, civil commotion, (2) military or usurped power The first refers to domestic disturbances of different degrees of intensity, down to civil commotion The words "military or usurped power ' seem to open a new and another category of event, to import something more than mere internal incident military and usurped pow ' suggest something in the nature of war or civil war than riot and tumult This is a riot clause and a war clause combined "[2]

A fire insurance policy may also provide an option clause to the effect that either party shall have the right to terminate the contract at any time during the currency of the risk subject to the return of a proportionate part of the premium for the unexpired term Such a clause gives reciprocal rights to the assured and the insurer Neither party is required to show justification for cancellation in a Court of Law It is enough for the assured to show that he wishes to terminate the policy and similarly it is enough for the insurer to put an end to the policy by giving notice of such intention to the assured The guiding motive cannot be questioned in a Court of Law Such a clause is in wide use and does not oblige the Insurance Company to give any reason for exercise of the option therein or to justify the sufficiency of the reason in a Court of Law When the option is exercised the contract comes to an end The fact that the assured had no knowledge of the terms and conditions of the cover notes or the usual terms and conditions of the policy are wholly immaterial When the assured went to the defendant company and filled up a proposal for fire insurance in one of its printed forms of proposals and accepted a cover note which referred to the conditions of the insurer s policies, the assured was bound not only by the terms of the cover note but also by the policies whether the assured had seen them or not[3] The right of the insurer to terminate the risk may be limited to cases where there is an increase of hazard but as a rule the policy reserves to them an absolute discretion to terminate in any circumstances[4]

Where the policy provides that on difference as to the amount of loss, it should be a condition precedent to any right of action on the policy that the arbitrator s award as to loss was first to be ascertained, an action on the policy would not include proceedings to enforce the award[5] Thus, where a fire insurance policy contained a clause as follows ' In no case whatever shall the company be liable for any loss or damage after the expiration of 12 months from the happening of the loss or damage unless the case is the subject of pending action or arbitration " The word action' referred to legal proceedings and did not include investigation by the company s assessor and the clause in question was not contrary to public policy and did not defeat the provisions of any law within the meaning of sections 23 and 28 of the Contract Act[6]

Again, where there is a clause in the policy to the effect that in case of an arbitration taking place in pursuance of any difference arising as to the amount of any loss or damage, an action or suit was to be commenced within three months after the arbitrator's award it was competent to the plaintiff to bring his suit at any time within three months of the making of the award[7]

1 *Samuel L. Levy v Assicurazioni Generali* 190 I C 843 1940 I C. 199 1940 A C 791

2. *Rogers v Whittaker* (1917) 1 K. B 942.

3. *Chandmull Jain v General Assurance Society Ltd* 63 C W N 367 1959 Cal 558

4 *Sun Fire Office v Hart* (1889) 14 App Cas 98 see also MacGillivray Insurance Law, Vol 2 5th Edn pp. 963-964.

5 *Mayadas Bhagat v Commercial Union Assurance Co Ltd* 1 L R (1937) 1 Cal 541 41 C W N 193 169 I C 788

6 *A N Ghose v Reliance Insurance Co* 15 Rang 475 149 I C 15 1934 Rang.

7 *Bejoy Lal Mukherjee v New India Assurance Co Ltd* 41 C W N 339 168 I C 224 1935 Cal 550

The arbitration clause in fire insurance policies may be in any of the three forms, as follows (i) a reference of all disputes to arbitration and arbitrators award to be a condition precedent for bringing any action on the policy, (ii) a reference of any dispute arising as to the amount of loss or damage to arbitration and action to be brought only upon the amount as may be awarded by the arbitrator, or (iii) a reference either of all disputes or of the amount of loss to arbitration but without any stipulation that such reference or award shall be a condition precedent to taking action under the policy [1]

Sometimes conditions in fire insurance policies are found to contain that the policy would be forfeited if the assured used any fraudulent means or device to obtain benefit under the contract It has been laid down that there is nothing to prevent the parties to a contract from extending the consequences of fraudulent conduct and particularly so in a contract which calls for the utmost good faith between the parties But this should be done in language of clarity to make it quite apparent that such was the intention [2] If it be proved that the assured effected the policy with intent to destroy the insured property, the whole insurance will be void Even over-valuation of property insured would constitute an important evidence in support of a plea of wilful-fire-raising or insurance with fraudulent intent [3]

In a policy it provided in a clause for indemnity against prevention of business caused solely by accident which included explosion and by another clause it was provided that the company was not to be liable for any prevention of business resulting from an accident caused by fire (nor for any prevention of business resulting from fire outside the object following the accident) On an action upon the policy for a claim for loss of business the Privy Council has observed that the insurance of loss by explosion covered loss by fire following that explosion as explosion and the fire were all one The damage done by the fire was part of and included in the damage done by explosion for which the assured was entitled to recover Thus the total prevention of business was caused solely by the explosion within the first part of the policy The subsequent clause in the policy was an exception and not a qualification of the risk and the mere fact that the words "nor for any prevention of business resulting from outside the object following the accident' were included in a bracket was not sufficient to change its character from an exception to a qualification [4]

Again where there was a stipulation in a policy not to keep openings in walls of the insured godown but the company sanctioned installation of water-sprinkler and temporary holes were made in walls for water-pipes to pass and the insurance was accepted with the knowledge and risk of existing holes and a fire broke out during installation and caused loss and damage to the premises On a suit on the policy it was held that 'holes' were not "openings" within the meaning of that term in warranty and that the company had waived the terms and acquiesced in the installation being carried out and could not rely on terms of warranty [5] But where there was a warranty in the policy that no hazardous goods should be stored in the premises, on an

1 See *Scott* v *Avery* (1856) 5 H L C 811, *Spurrier* v *La Cloche* (1902) A C 446 *Atlantic Shipping Co* v *Dreyfus* (1922) 2 A C 255 *Joseph Crosfield & Sons* v *Manchestership Canal*, (1905) A C 421 and also MacGillivray Insurance Law Vol 2 5th Edn pp 964-975

2 *Vijaya Kumar* v *New Zealand Insurance Co Ltd* 1954 Bom 317

3 *Hercules Insurance* v *Hunter* (1835) 14 S 147 (1836) 14 S 1137

4 *Abasand Oils Ltd* v *Boiler Inspection and Insurance Co* 1950 P C 39

5 *Kanaiya Lal Lohia* v [illegible] I L R (1918) 2 Cal 400 182 1939 Cal 105

action on the policy the assured could not contend that he could store one per cent of such goods and the company taking possession of salvage and keeping it for month was not estopped from contesting the claim [1]

A policy of insurance is to be construed by the same rules as other contracts, the duty of the court being to collect the meaning of the parties by taking the language employed in a plain and ordinary sense and not to speculate on some supposed meaning which they have not expressed The courts will, far from favouring forfeiture, lean against it [2] Any conditions outside a policy of insurance, which run counter to the terms of the policy itself, cannot be considered in interpreting the policy, if the insurance policy makes no reference to the prospectus or rules of the company it cannot be referred to in construing the policy [3]

Assignment —As a general rule the policy money is not available to the assignee unless the policy expressly or implied says so Thus, when the promise was to pay the assured, his executors, administrators and assigns, the heirs at law of the assured to whom the premiums had passed on death could not recover in respect of a fire happening after the death of the assured [4] But in U S a policy effected in the name of a receiver thus, "L S K receiver for N and H" was held to be available to his successor in the receivership [5] But the conditions of a fire policy are now usually framed so that the policy may be available to indemnify the assured and all persons to whom his interest in the property may pass by will or by operation of law [6]

In an action on certain fire insurance policies the insured and his assignee failed to prove the alleged loss by fire and their claim was found to be grossly exaggerated and thus fraudulent This resulted in forfeiture of all benefits under the policies In appeal to the Privy Council, the assignee could not be allowed to raise the questions on the merits so far as regards even proved losses and damage caused by fire when these points were abandoned or not raised in the lower court [7]

Misdescription of premises insured effect of —By 'material misdescription' in relation to an insurance policy is meant a misdescription such as would affect the mind of a reasonable insurer either as to acceptance of the risk or as to the premium which he would place upon the risk Thus, where in a policy of fire insurance the property insured was described as being constructed of brick walls and cement flooring in the ground storey, timber walls and flooring in the upper storey with shingled roof but the evidence was that the two outside lateral walls were, as to one-third of their length , brick and as to two-thirds timber the Privy Council held that it was a material departure from the actual description which was that all the ground floor walls were brick Even if the lateral divisions which divided up the building were of brick right through from back to front in two cases and made of corrugated iron in respect of the other two it still left the description of the building

1 *Abdul Majid* v *Motor Union Insurance Co Ltd* 40 P L R 549 178 I C 35 1938 Lah 168

2 *National Indian Life Insurance Co Ltd* v *Mahadevan* 56 Mad 980 65 M L J 324 38 M L W 327 (1933) M W N 968 147 I C 458 : 1933 Mad 680

3 *Annapurnabai Ghate* v *Hindusthan Co-operative Insurance Society Ltd* I L R (1943) Nag 253 1942 N L J 380 203 I C 193 1943 Nag 9 *see also Sun Life Assurance Co Ltd* v *Nistaran Mookherjee* I L R (1938) 2 Cal 608 42 C W N 1197 68 C L J 131 180 I C 560 1939 Cal 693

4 *Middmay* v *Folgham* (1797) 3 Ves 471

5 *Steel* v *Phoenix Insurance* (1892) 51 Fed Rep 715

6 See *Pitt* v *Laming* (1814) 4 Camp 73

7 *Central Bank of India Ltd* v *Guardian Assurance Co Ltd* 64 C L J 90 : 44 M L W 78 1936 M W N 812 : 165 I C 539 : 1636 P C 179

inaccurate, and it was inaccurately described in a matter which was material for insurance purposes and hence the insured was not entitled to claim through the policy [1]

Joint insurance —In the case of a joint insurance, the fraudulent claim of one of the persons assured would equally affect the other persons though the insurable interests of the assured were different Thus, where *A* and *B* jointly insured certain premises against loss by fire with the defendant company and *A* made a claim for a sum of Rs 4,00,000 and it was found that except for a sum of Rs 45,000 which was admitted by the insurance company, the claim was grossly exaggerated and was fraudulent, it was held that *A*'s claim failed entirely [2]

Liability of insurance company —An insurance company by accepting the renewal of a policy of fire insurance out of time does not take the risk of an accident having happened in the meantime unknown to itself [3] So also the receipt of the money for a new policy when the original policy lapsed not having been renewed, by the canvassing agent did not bind the company [4]

14 **"Life insurance business"** —Life insurance business has been defined in clause (11) of section 2 of Insurance Act, 1938, to mean the business of effecting contracts of insurance upon human life Such contract within the meaning of the definition will include—

(*a*) any contract whereby the payment of money is assured on death (except death by accident only) ,

(*b*) any contract whereby the payment of money is assured on the happening of any contingency dependent on human life , and

(*c*) any contract which is subject to payment of premiums for a term dependent on human life

Such contracts will also include—

(*a*) the granting of disability and double or triple indemnity accidents benefits, if so provided in the contract of insurance ,

(*b*) the granting of annuities upon human life , and

(*c*) the granting of superannuation allowance and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons

The business of a company consisting exclusively in granting terminable pensions or annuities dependent on human life in favour of the subscribers or their nominees is insurance business as defined in section 2 (11) of the Insurance Act [5]

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1 *Dawsons Bank Ltd* v *Vulcan Insurance Co Ltd* 39 C W N 270 60 C L J 551 37 Bom L R 141 1935 A L J 51 68 M L J 99 41 M L W 160 153 I C 311 37 I L R 217 13 Rang 63 1935 P C 1

2 *Guardian Assurance Company Ltd* v *Pustomji Company* 1C2 1 C 443

3 *Ram Singh* v *Century Insurance Co Ltd* 60 Cal 332 36 C W N 1101 1933 Cal 170

4 *Universal Fire & General Insurance Co Ltd* v *Shup Shin Hin* 12 Ran 312 154 I C 53 1934 Rang 261

5 *G F Pension Fund* v *Commissioner of I T W B* (1955) 1 S C R 822 : 1955 S C J 174 1955 S C 50

The Indian Insurance Act, 1938, mainly deals with the, law relating to the business of insurance and does not deal with any general principles of the law of different kinds of insurances defined in section 2 of the Act In the absence of any legislative enactment on the subject, courts in India have in dealing with the topics of different insurances relied so far on general rules of the law of contract as embodied in the Indian Contract Act and Indian decisions and to a large extent on judicial decisions of courts in England and opinions of English jurists [1]

Life insurance contract, its definitions —A contract of life insurance when strictly defined means a contract under which the insurers undertake, in consideration of specified premiums being continuously paid throughout the life of a particular person to pay a specified sum of money upon the death of that person But when broadly defined it comprises any contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another party Still more widely defined, it is a contract in any way relating to human life [2]

Other definitions from American decisions may be quoted thus—

"Life insurance is a promise to pay a certain sum upon the death of the assured" [3] "Life insurance is a contract whereby the insured agrees to pay certain sums, called premiums at specified times, and in consideration thereof the insurer agrees to pay certain sums of money on certain conditions and in specified ways" [4] 'Life insurance imports a mutual agreement, whereby the insurer in consideration of the payment by the assured of a named sum annually, or at certain times, stipulates to pay a larger sum at the death of the assured" [5] The law, however is not fond of definitions, and these definitions are to be taken perhaps, rather as statements by the learned men who make them, than as strict definitions which contain every essential element without which the contract cannot exist, and which exclude everything not necessary to its being [6]

Origin and kinds of life insurance —The origin of life insurance is later than fire and marine insurances In France it was in early times prohibited on the ground that it might give an incentive to those who would benefit by the termination of a life to hasten such termination In England it was not so prohibited but had the sanction of the judiciary long before such sanction given by the Parliament In America it followed the common law of England into such States as adopted that system but for a long time it has been almost entirely regulated by special legislation in almost all States In India it also followed the common law of England until the companies doing the life insurance business were governed by the Life Assurance Companies Act (VI of 1912)

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1 See *Lakshmi Kumar v New Zealand Insurance Co Ltd* 1954 Bom 347 For reference to English law and precedents see *R Motilal Krishnan v Chinnalal Desai & Co* 1940 Mad 452 *Binapani Raja v Rabindranath Sarker* 1959 Cal 213 *Narmal Kumar Jain v Satya Prakash Jain* 1961 All 109 For reference to decisions of the United States and Australian Courts see *Peshan Lal v Emperor* I L R 1945 All 782 1946 All 161 *Jan Bux Jain v Collector of Bombay* I L R 1946 Bom 517 1946 Lom 216 *Chamaklal Dwarkadas v State of Madras* I L R 1951 Mad 113 1951 Mad 120 (F B) *Shashikant v State Government of M P* 1951 Nag 38 (F B)

2 Halsbury's Laws of England Simonds Edn Vol 22 pp 272 273

3 *Ellis on v Straw* 97 N W 168

4 *Moreau Massachusetts Mutual Life Insurance Co* 11 C N S 71 Supp 102

5 *Ritter v Mut al Life Insurance Co of New York* 10 Sct 300

6 *State v Citizens Benevolent Association* 6 Mo App 163 quoted in 44 C J S at pp 464-465

The motive for its origin is traceable to benevolence, the object being to secure to the family of a person who is dependent on a salary, or other income which ceases with his life, a support on the death of insured by a small contribution of the annual income [1] It is true that in recent years many new features have been added to it, which may seem to be foreign to its original conception but the main principle on which it rests has not been changed [2]

Life insurance is designated by various names according to the nature of the terms and conditions of the different forms of contracts or policies They may be—

(i) Endowment insurance, *i e*, a contract to pay a fixed sum to insured if he survives for a specified period, or, if he dies within such period, to some other person nominated or indicated Under this head includes child s endowment or deferred life insurance Considerable difficulties have arisen with regard to the latter type of insurance as normally a person has insurable interest in the life of his child and such a policy would therefore be illegal but when the policy is in the form now commonly current, the proposer will be regarded as holding the policy in trust for the child [3]

(ii) Limited payment insurance, *i e* a form of life insurance which contemplates payment of premiums by insured for a specified period or until his death within such period and for payment by insurer on the death of the insured

The difference between the endowment insurance and the limited-payment one lies in this that the latter becomes payable on the death of insured while the former is payable at the termination of the endowment period or on the death of the insured if it occurs earlier

(iii) Whole-life insurance—This is the normal form of insurance which contemplates payment of insurance money on the death of the insured to his legal representatives or assigns in consideration of periodical payment of fixed premium

(iv) Paid-up insurance *i e*, where no further premiums are to be paid It may be of two kinds (*a*) where premium is paid as a single payment and the money becomes payable at a time stipulated or at death if it occurs earlier, (*b*) where the original policy is converted into a paid-up policy, because of a default in the payment of premiums it means insurance reduced to an amount corresponding to the premiums paid, so that no further premiums are required to be paid

(v) Term insurance, *i e*, insurance for a term of years only, or until insured shall arrive at a certain age or for the term or period for which a premium has been paid with the right to continue it from term to term on payment of the required premium Two-year temporary assurance policies issued by the Life Insurance Corporation of India may be cited as an example [4] Where agreement to pay specified amount if death occurs before expiration of one year and to renew and extend the insurance during successive years if required premiums were paid was held to be a contract of insurance for the term of one year only with provisions for renewal for successive years

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1 *State* v *Merchants Exchange Mutual Benevolent Society* 72 Mo 146

2 44 C J S 486

3 See *Re Webb Barclays Bank Ltd* v *Webb* (1941) Ch 225 (1941) 1 All E R 321 Halsbury s Laws of England Vol 22 p 290

4 *See* also *McDougall* v *Provident Sav Life Assurance Society* 32 N E 251 135 N Y 551

(*vi*) Advance insurance, *i e* insurance providing for the payment to insured of a lump sum immediately for consideration of his agreeing to make certain periodical payments to insurer for a specified period or for the life of insured if his life should terminate before the end of that period Examples of this kind of insurance may be found in contracts to furnish funds for the building of a house, to be repaid by monthly or quarterly instalments, which shall cease on death [1]

(*vii*) Joint-life insurance, *i e*, insurance on the joint-life of husband and wife, insurance money payable if death should occur to either of them

(*viii*) Annuity insurance, *i e*, insurance whereby insurer agrees to pay certain fixed sum as annuity by monthly payment either at the expiration of the specified period or earlier if death should occur to the insured

The Life Insurance Corporation of India undertakes various kinds of life insurance of which mention may be made of (1) limited payment life insurance, (2) endowment insurance, (3) joint-life insurance, (4) multi-purpose insurance, (5) children's deferred insurance, (6) two-year temporary insurance, (7) whole life-insurance, (8) double endowment insurance, (9) triple benefit insurance, (10) anticipated endowment insurance, (11) convertible whole life insurance (12) special whole life insurance, (13) annuity insurance including single premium to immediate or deferred annuity insurance and educational annuity insurance, (14) fixed-term marriage endowment insurance

Insurable interest, the basis of life insurance contract —For the validity of life insurance contract the first requisite is that there must be insurable interest otherwise the contract will be void as being wagering one It is, indeed, difficult to define with absolute precision what will in all cases constitute an insurable interest in the life of a person to take it out of the wagering contract Each case must depend on its own facts and any general rule cannot be laid down in this regard So far as the life of the insured himself is concerned he has an unlimited insurable interest in his own life which is sufficient to support it and such a contract is not against public policy But difficulties arise where it concerns the life of another But certain rules have been stated in this regard thus—

'Stated concisely an insurable interest in the life of a person is an interest in having the life continue a person has an insurable interest in the life of another where there is a reasonable probability that he will gain by the latter's remaining alive or lose by his death Stated more comprehensively an insurable interest exists where there is reasonable ground, founded on the relations of the parties to each other either pecuniary or contractual or by blood or affinity, to expect some benefit or advantage from the continuance of the life of insured and unless there is a reasonable pecuniary interest, or a close tie by blood or marriage justifying the expectation of benefit or advantage from the continued life of insured, a policy of insurance taken out on the life of another is condemned is one of wager for the purpose of speculating on the hazard of a life in which the beneficiary has no insurable interest' [2]

MacGillivray has given a good working definition of insurable interest applicable to all risks from the Life Assurance Act 1774 thus "Where the assured is so situated that the happening of the event on which the insurance money

1 See *Shiu v Feardon* 92 N W 412

2. Corpus Juris Secundus Vol 44 pp 901-904

is to become payable would, as a proximate cause, involve the assured in the loss or diminution of any right recognised by law or in any legal liability there is an insurable interest in the happening of that event to the extent of the possible loss or liability "[1]

A person effecting an insurance must be actually dependent on or expect advantage from continued existence of person insured But when he effects such insurance on his younger brother's life he has no insurable interest and hence such an insurance contract is void under sections 23 and 30 of the Contract Act Even, an insurance company can, under section 92 of the Evidence Act, prove that person effecting insurance is doing it for his own use and benefit and not for the use and benefit of the person insured [2] A friend, stranger, or boarder his no insurable interest in another's life, nor an uncle or aunt and nephew or niece has such interest, but a parent and child, brother and sister, grand-parent and grand-child, husband and wife and persons in *loco parentis* and persons occupying the fiduciary relationship have insurable interest in the life of the other It is to be remembered that relationship by affinity alone is not sufficient to confer an insurable interest on a step-mother, step-father or step-child or on a son-in-law, brother-in-law, or sister-in-law [3]

Life insurance and other kinds of insurance —The main difference between life insurance, and other kinds of insurance lies in the fact that life insurance is a contract to pay a specified sum on a contingency involving the death of the person insured irrespective of the value of the life itself and is not a contract of indemnity like most insurance contracts An accident insurance has been spoken of as a contract of indemnity But essentially the same principles underlie both in life and accident insurance Thus, where an accident policy besides providing for indemnity against was due to bodily injury by accidental causes, stipulates for the payment of a certain sum to a person named in case of death of the insured by that accident, it is in that respect a life insurance policy [4]

Life assurance contract originally is not of indemnity, but whether re-insurance contract is of indemnity of original insurer's risk or independent contract depends on terms of re insurance policy Re-insurance of life assurance contract is, however, indemnity contract and does not fall under section 124 or section 125 of the Contract Act [5]

Circumstances affecting the risk in life insurance —Contracts of insurance, as noticed in fire insurance are *uberrimae fidei* Life insurance contracts are also so and they proceed on the basis that every material fact is disclosed and its non disclosure entitles the other party to avoid the contract What facts are material is a question of fact in each case All such facts which would influence a reasonable man either to accept or to decline the risk or to stipulate for a higher premium would be material [6] So also any facts which tend to suggest that the life insured is likely to fall short to the average duration are

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1 Insurance Law Vol 1 5th Edn p 187

2 *Mani Shankar Someshwar Pandya* v *Allianz Und Stuttgarter Life Insurance Bank Ltd* 42 P L R 801 193 I C 155 1941 Lah 33.

3 Corpus Juris Secundus Vol 44 pp 906-910 see also Halsbury's Laws of England Vol 22 p. 279-280

4 See *Lemaitre* v *National Casualty Co* 186 S W 964 *Standard Life & Accident Insurance Co* v *Carroll* Pa '66 F 567

5 *Tropical Insurance Co Ltd* v *Zenith Life Assurance Co Ltd* 196 I C. 198 1941 Lah 68

6 *Shiv Kumar Radhakrishndas* v *North British & Mercantile Insurance Co Ltd* 166 I C. 16 1936 Sind 222.

material facts Hence age, health, occupation, habits or pursuits or the previous history of the assured become also material facts [1]

A recital in a policy of insurance that all the representations, statements and agreements in the application for the policy are made a part of the contract makes the truth of the statements contained in the proposal apart from the question of materiality, the condition of the liability of the insurance company But where the statements made by an insured upon his application for a policy of life insurance are not made the basis of the contract but are to be treated merely as representations the materiality of the representation is an element to be considered The falsity of the statement involving forfeiture of the policy must, however, be established by clear and unambiguous evidence [2] That is where the applicant's statements are to be treated as representations and not warranties, it is not sufficient, in the absence of fraud, to vitiate the policy [3] Again when a life policy is issued on the basis of statements made in a proposal form and made in what is called a "personal statement" to the medical examiner and if those statements eventually prove to be untrue, the policy would be avoided [4] So also where some of the answers given by the assured in his proposal and declaration forming the basis of the contract are untrue, the policy is void irrespective of the question of its materiality [5]

Medical questions as are usually asked in forms of applications for insurance are often somewhat embarrassing and cannot reasonably be expected to be answered with strict and literal truth They must often be read with some limitation and qualification to make them reasonable and they must always be read in a fair and common sense way, having regard to all the circumstances [6] Thus, in a joint life insurance while wife gave menstruation certificate but both husband and wife were aware of her pregnancy at the time of declaration and the wife died in child birth it was held that the husband could not claim the policy money [7] So also where the insured in giving his family history concealed the death of his two brothers, the company was held not liable under the policy [8] Similarly, the assurance company was entitled to repudiate its liability where three of the answers—one given to the doctor and two on the proposal form were found to be incorrect [9] Likewise when the assured failed to disclose the fact that no policy was issued to him by another company as they were not prepared to accept the proposal at normal rates or that he had proposed twice to another company, such failure to disclose vitiates the policy [10]

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1 See *Lacy* v *Scottish Employers Insurance Co* (1901) 17 T L R 229 Statement as to weight and height *Hemmings* v *Scottish Life Assurance Association* (1905) 1 Ch 365 Misstatement of age *Fidelity & Casualty Co of N Y* v *Mitchell* (1917) A C 592 1 C Latent disease *Australian Widows Fund Life Assurance Society* v *National Mutual Life Association of Australasia* (1914) A C 634 P C habits or pursuits *Yorke* v *Yorkshire Insurance Co* (1918) 1 K B 662 Drug habits *Looker* v *Law Union and Life Insurance Co* (1928) 1 K B 554 Change in health after the proposal and before its acceptance.

2 *Great Eastern Life Assurance Co Ltd* v *Bai Hira* 52 Bom 125 32 Bom L R 1671 1931 C 714 1931 Bom 146

3 *Hemlata Deb* v *Manufacturers Life Assurance Co Ltd* 1 L R (1937) 2 Cal 67 41 C W N 611 172 I C 310 1937 Cal 510

4 *Allianz und Stuttgarter Life Insurance Co Ltd* v *Hemanta Kumar Das* I L R (1938) 2 Cal 457 42 C W N 855 178 I C 554 1938 Cal 611

5 *Light of Asia Insurance Co Ltd* v *Kedar Deb* 40 C W N 1016 67 C L J 536 166 I C 707 1936 Cal 437

6 *Haridasi Deb* v *Manufacturers Life Assurance Co Ltd* supra

7 *Maung Myat Maung* v *New India Assurance Co Ltd* 171 I C 631 1937 Rang 252

8 *Light of Asia Insurance Co Ltd* v *Kedar Deb* supra

9 *Lakshmi Shankar* v *Gresham Life Assurance Society Ltd* 34 Bom L R 1293 1401 C 575 1932 Bom 582.

10 *Shiv Kumar Radhakrishandas* v *New British & Mercantile Insurance Co Ltd* 166 I C 16 1936 Sind 222.

Proof of age —Where a proposer has furnished proof of his age and the company accepts and admits it by an endorsement on the policy it is not entitled to say subsequently that the age was something different from what he had stated [1] But where the age is not admitted, the burden of proving the age initially would be on the person claiming under the assurance but where the age is admitted, then on the principle under the Evidence Act that facts which are admitted need not be proved, it is for the company to prove that the admission of age was procured by fraud and that the representation as to age is untrue [2] Where in proof of age, a certificate of identity stating the age was signed by a Magistrate, a medical certificate stating the age and a certificate from the officiating Controller of Examinations of the University stating the age were produced before the company the latter ought to have been satisfied with the proof of age submitted [3]

Construction of life insurance policies —The established rule of interpretation of policies of assurance is that if the terms of a policy are couched in ambiguous language, that interpretation should be favoured which is beneficial to the assured The underlying principle is that the terms of the policy, being the language of the company, must be interpreted against it Again where a policy of insurance contains a clause to the effect that it is granted subject to "the rules and regulations for the time being in force", the words "for the time being in force" mean the rules and regulations in force at the time of the maturity of the policy, that is to say, that the rules as contained in the Prospectus and Table of Rates in force on the date of the maturity [4]

Where, by a policy of insurance the insurer undertook to pay 'the assured or his wife *A* if he predeceases her, and on the death of the assured *A* sued to recover the amount due under the policy, it was held that there was a valid trust in favour of *A*, and *A* was entitled to recover the money In order to create a trust in favour of his wife, it is sufficient if the assured intended that in the event of his death the policy should enure to the benefit of his wife Express words to this effect in the policy are not necessary [5] An agreement that the money under the policy would be paid only to the assured or to his assign or his executor or administrator is a good contract which must bind not only the assured but also anybody claiming title under him [6]

The condition as to suicide when the policy was issued was that the assured committing suicide, his heirs or assignees would not be entitled to receive anything more than the premia paid Subsequently this rule was amended and the new rule provided that if the assured committed suicide within two years of the issue of the policy, the sum payable by the company would be the amount of the premia paid by him but if, however suicide was committed after two years of the date of the policy, there would be no forfeiture This provision was in force at the time of the suicide of the assured The amended rule was held applicable and the heirs of the assured were entitled to claim

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1 *Allianz und Stuttgarter Life Insurance Bank Ltd* v *Hemanta Kumar Das* sup a

2 *Mareklal Kalidas Shah* v *Yorkshire Insurance Co Ltd* 41 Bom L R 353 182 I C 127 1939 Lom 161

3 *Umaram Bose* v *Modern India Life Insurance Co Ltd* 171 I C 193 1937 Cal 243

4 *Co operative Assurance Co Ltd* v *Sahdev* 38 P L R 405 162 I C 150 1936 Lah 685

5 *Abhiramev Iv Annal* v *Official Trustee of Madras* 55 Mad 171 62 M L J 111 35 M L W 338 141 I C 680 1932 Mad 220 *see also I F R M A Arishnan Chettiar* v *Velayee Ammal* I I R (1938) Mad 909 (1938) 2 M L J 22 48 M L W 25 177 I C 119 19 [illegible] 1 604 (F B)

6 *Cresham Life Insurance* [illegible] *Collector of Etawah* 51 All A L J 1015 143 I C 34

the full amount covered by the policy [1] Where *A* insured his life for the benefit of his wife *B* but *A* obtained a loan from the company and later on surrendered his policy on receipt of certain amount, on a suit by *B* for recovery of the insurance amount on *A*'s death on the ground that a trust had been created in her favour, it was held that the proper person to sue was the Official Trustee when it was not shown that the execution of the trust had become impracticable or that the Official Trustee had disclaimed trusteeship [2] Where under the terms a policy which has acquired a surrender value sufficient to pay at least one year's premium is not forfeited immediately by non payment of the premium within ten days of grace such surrender value being automatically applied in payment of instalments of premium and interest thereon to keep the policy in force for so long a term as such surrender value will cover, the default would not cause the policy to be forfeited [3] In the instant case annual premium of Rs 150-12-0 was payable in four quarterly instalments of which three were duly paid and default occurred in respect of the fourth The surrender value on the date of default was Rs 86-3-0 and surrender value was held to be applied for the payment of 4th instalment and policy could not be forfeited

Again where the premium was not paid within the days of grace and the request to revive the policy was not made within 12 months as stipulated, the insured was not entitled to the revival of the policy nor was he entitled to the return of his premium The period of 12 months fixed in the policy for making an application for a paid-up policy or surrender value even if it be granted was not the essence of the contract the assured was not entitled to a paid up policy when he had made such claim only after the lapse of more than four years and had not made it within a reasonable time Even if it be assumed that the clauses in a policy relating to the making of an application for paid up policy and surrender value within 12 months are stipulations for forfeiture they are not stipulations in the nature of penalty against which relief ought to be granted [4]

An insurance company having means of knowing "certain fact which would invalidate policy, when still accepted premiums, such acceptance of premia would not constitute any waiver as actual knowledge" of such fact and its condonation are necessary [5]

Revival of lapsed policy —The revival of a lapsed policy is not dependent on the goodwill or grace of the company but on the fulfilment of certain prescribed conditions The very idea underlying such revival is, of course that the assured should be alive on the date of revival If he was dead when the policy is in the state of lapse there can be no revival [6] When the conditions mentioned in the policy are fulfilled the renewal of lapsed policies follows as a matter of course The insurer cannot add further terms in the conditions if and when the revival is desired so as to affect the terms of the original agreement Thus where the original agreement did not require

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1 *Co operative Assurance Co Ltd* v *Sahdev* 38 I L R 405 162 I C 150 1936 Lah 685

2. *Lakshmi Ammal* v *Sun Life Assurance Co* 57 Mad 536 136 M L J 657 39 M L W 379 1934 M W N 633 151 I C 112 1934 Mad 264

3 *National Indian Life Insurance Co Ltd* v *Mahadevan* 56 Mad 980 65 M L J 324 1933 Mad 680

4 *Sankara Menon* v *Empire of India Life Assurance Co Ltd* 61 M L J 388 34 M L W 613 1931 M W N 624 134 I C 977 1932 Mad 241

5 *Western India Life Insurance Co Ltd* v *Annapurna Sirkar* 1 L R (1942) 1 Cal 100 46 C W N 759 203 I C 548 1942 Cal 412

6 *Hiroon Bibi* v *United India Life Insurance Co* (1946) 2 M L J 253 59 M L W 542 1946 M W N 641 1947 Mad 122.

that the assured should continue to be alive at the time when the company takes up the application for renewal for consideration the contention that the death of the assured so operated as to render the revival of the lapsed policy ineffective is not tenable nor is the contention that until the acceptance of the renewal application and the issue of the memorandum stating that the policy has been revived, the policy remains lapsed is acceptable [1] In the same case it has also been said that the expression "continued good health" could only refer to good health from that date from which the risk under the original policy started to the date of the declaration and not till the consideration by the Director The fact that by the time of the death of the assured, the challan and the declaration of good health sent by the insurance agent did not reach the insurance company but was received after the death and was later on kept in the 'anamat' account and then adjusted towards the revived policy would not affect the accruing of the liability for the insurer company [2]

Payment of premium —When an insurance company accepts a proposal for life insurance subject to the payment of the first premium thereunder within 30 days from the date of such acceptance it is in law a counter offer to be completed thereafter into contract by the fulfilment of that condition as required thereunder [3] When a policy provides that premiums should be paid on certain fixed dates and in order that the policy may not lapse, allows certain days of grace within which the premium has to be paid, the days of grace must be computed from the next day after the due date fixed for the payment of the premium [4] The due date cannot be called the date on which grace or favour was shown to the assured The first day on which such grace could be shown would be the day subsequent to the due date Hence in calculating the days of grace, the due date should be excluded.[5] Again, where a policy was kept alive by surrender value but subsequent premiums were paid after due date but before days of grace the premiums should be held effective as if made before due date [6]

Contracts of insurance, construction, principles of —In interpreting the terms of a contract of insurance they should receive fair, reasonable and sensible construction in consonance with the purpose of the contract as intended by the parties An attempt should be to construe a contract in liberal manner so as to accomplish the purpose or the object for which it is made Where the construction is doubtful, the courts lean strongly against the party who prepared the contract Where there is a susceptibility of two interpretations, the one favourable to the insured is to be preferred The rule of construction against the insurer and favourable to the insured stems from what otherwise is called the rule of *contra proferentem* which is based on the maxim *verba chartarum fortius accipiuntur contra proferentem* In their anxiety not to subvert the very object and purposes of insurance, which is to give fullest protection to the policy-holder or his nominee, the courts indulge in making every presumption favourable to good faith and reasonableness in preference to equivocation or verbal jugglery [7]

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1 *Hindusthan Ideal Insurance Co Ltd* v *B Venkatakshmamma* 1959 Andhra 562

2 *Ibid*

3 *Benarsi Devi* v *New India Assurance Co Ltd*, 1 59 B L J R. 425 : 1959 Pat L. R 198 : 1959 Pat 540

4 *T G Rajan* v *Asiatic Government Security Life Assurance Co Ltd* (1930) 2 M L J 1020 : 48 M. L. W 746 : 1938 M W N 1148 : 1939 I C 156 : 1939 Mad 159

5 *Brindavani Debi* v *Co-operative Assurance Co Ltd* I L R (1914) 1 Cal 101 : 21 I C 450 : 1914 Cal 1

6 *Hardayal Tolomal* v *Laxmi Insurance Co Ltd* (1941) Kar 409 : 197 I C 93 : 1941 Sind 209

7 *Lakshmi Insurance Co Ltd* v *Bibi* 1961 Punj 253

"Sickness, ailment or injury", meaning of —The contract of life insurance being one of utmost good faith and the probable expectancy or duration of the life of policy-holder being an important element in it, the controlling factor in the construction of terms 'sickness ailment or injury" in the application of the insured for revival of his lapsed policy must necessarily be the intent of the parties without attaching to any one of these terms any technical or theoretical meaning These terms refer to disorders of substantially serious nature affecting general health and do not include passing indispositions which do not affect the applicant's general health But if the insured learns from his physician that he is suffering from pulmonary tuberculosis a warranty of good health in the application for revival of policy would be a good ground for avoidance of the insurance contract as the disease is such which definitely involves impairment of the health of the insured and thus renders the insured precarious risk [1]

Proposal form its object and function —The object of proposal form is to provide information on which the insurers act in deciding whether to accept the proposal at all, or if so at what premium So in signing, completing and submitting the proposal form there is a duty on the proposer to make a full and frank disclosure of material facts and to be accurate in representations which he makes as to material facts In the proposal form the proposer has to reveal to the insurers a host of circumstances such as, the circumstances in which the assured is placed, his habits, the mode of life, his age, occupation and other personal details But the obligation to disclose does not extend to matters not within the knowledge of the proponent Thus if an experienced doctor cannot without special tests discover the existence of a disease such as hepatitis, it is not reasonable to expect the proposer who is an ignoran layman, to disclose that disease even if it be assumed that he suffered from the same [2] But it is to be remembered that there is a legal obligation cas upon the proponent to communicate not only every material fact of which he had actual knowledge, but also every material fact of which he ought in the ordinary course of business, to have knowledge [3] The duty to disclose material facts continues right up to the conclusion of the contract and also implies any material alteration in the character of the risk which may tak place between proposal and acceptance Thus if the proponent is accustomed to heavy drinking this is a material fact requiring disclosure as it would guide the insurer in determining whether to take the risk and if so at what premium and on what condition [4]

Assignment —Where an insured has assigned the policy during his lifetime to a third person, the money due under it does not form part of his estate and after his death his heir asking for a succession certificate is not entitled to the money due under the policy [5] But it is within the competence of an insured to make a conditional assignment of the policies taken out by him whenever such policy was an ordinary life policy or an endowment policy providing therein that in the event of the death of the assignee, the benefit of the policy would revert to him and the assignee alone is entitled to receive the sum assured in the case of the death of the insured before the day named [6]

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1 *Lakshmi Insurance Co Ltd v Bibi Padmawati* Assam 65
2 *New Ind a Assurance Co Ltd v Tambireddi Subba Reddy* 1961 Andh Pra 295
3 *Lakshmi Insurance Co Ltd v Bibi Padmawati* Assam 65
4 *New Ind a Assurance Co v Sushama* 1952
5 *Mrs S Misra v Mangala Kumari Deb* AIR 1946 Pat 253 27 Pat L T 263 243 I C 6
6 *Shiva Das Gobind Rao v Sawai Ba* S L R 98 : 170 I C 225 : 1937 S
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Where the condition in the policy was that it would be void if the assured commits suicide within the year of the existence of the policy and the assured kills himself after a period of 18 months, it was held on a suit by the assignee of the policy that he was entitled to recover from the insurance company the amount due under the policy [1] Again where a policy provides that the amount is payable to the assured or his wife if he predeceases her but the assured has assigned all the benefits under that policy to bank for valuable consideration the assignee bank is entitled to the money on the death of the assured and the wife of the assured cannot claim the money because the trust in her favour could only arise on the death of the assured and she has no vested interest in the subject-matter of the policy until the happening of the event contemplated under the policy [2]

A postal life insurance policy was assigned by the assured in favour of his sons Later on to obtain the surrender value himself the assured made a surrender of the policy which the insurer refused to accept because of the assignment Thereafter the policy was reassigned in favour of the assured and the insurer was requested to take action in the matter Upon these facts it was held that even if section 130, Transfer of Property Act, was applicable, there was no valid surrender in the instant case The first letter surrendering the policy had no validity The second letter too sent after the re assignment did not have that effect It followed that the heirs of the assured were entitled to the policy money and not only to the surrender value [3]

15 **Marine insurance business**—The expression "marine insurance business" has been defined in clause (13-A) of section 2 of the Insurance Act 1938 It is an all-comprehensive definition and within its fold is included the business of effecting contracts of insurance upon vessels of any description It also includes (*a*) cargoes (*b*) freights, and (*c*) other interests of whatever interests which can be legally insured such as goods, wares, merchandise and any property Such insurance can be made for any transit by land or water or both including incidental risks to such transit, such as, warehouse risks Even customary risks as are included in marine insurance policies come within its fold Thus, transit by land can be the subject matter of a marine insurance [4] So also where an insurance company undertakes to carry the goods to the places of destination by railway, motor and lorry, etc covering various risks including non-delivery and issues policies to that effect the company in issuing such policies intends to do marine insurance business within the meaning of clause (13-A) of section 2 of the Insurance Act [5]

Risk under marine insurance—Underwriters in a policy of marine insurance undertake, in consideration of a certain premium, to indemnify the party insured against loss arising from certain perils of the sea or sea risks to which the ship merchandise or freight of the insured may be exposed during a particular voyage or for a specified period of time Coverage of such risks is essential for commerce, as it tends to promote the spirit of maritime adventure by diminishing the risk of ruinous loss to which those who engag d

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1 *Northern India Insurance Co Ltd* v *Kanhoya Lal* 1 L R (1938) Lah 542 40 P L R 735 178 I C 210 1938 Lah 561

2 *Lalithambal Ammal* v *Guardian of India Insurance Co Ltd* (1937) 1 M L J 735 45 M L W 480 1937 M W N 801 169 I C 481 1937 Mad 64

3 *Union of India* v *Pappu Datter Sarma* 1961 Andh a 67

4 *Indian Trade & General Insurance C Union of India* 98 C L J 100 190

5 *Alliance Assurance Co Ltd* v 62 C W N 599

in it would otherwise be exposed The liability of an insurer in such insurance can arise only if the loss is attributable to a peril which has been insured against If an obstruction takes place, the insurer is liable for the loss which is the result of theft, pilferage or non-delivery subject to the overriding condition that the loss or damage arises from an external cause But the deliberate short supply of the goods by the consignors themselves is not an external cause So also a wilful misconduct of the assured such a loss arising from the wilful misconduct of the assured is also excluded on the ground of public policy [1]

Contract of marine insurance —Marine insurance is a contract to indemnify against loss from marine perils It is defined as a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed against marine losses, that is to say losses incident to a marine adventure [2] It is general if the perils insured against are such as the law would imply from the nature of the contract, but is special if additional perils are expressed in the policy By its express terms or by usage of trade, a contract of marine insurance may be extended so as to protect the assured against losses on inland waters or against any land risk which may be incidental to a sea voyage, and it may also cover a ship in the course of building, or the launch of a ship or any adventure analogous to a maritime adventure [3] Where a contract which is substantially one of marine insurance contains an ancillary clause covering the assured's liability to third parties, the special rules governing the contract of marine insurance will be held applicable to this ancillary clause [4] So also when the document contains all terms of contract of insurance the policy is of sea-insurance though described as certificate of insurance [5]

Marine policies may be classified into (1) interest and wager policies, (2) valued and open policies, (3) voyage and time policies and (4) floating or running policies An interest policy in marine insurance is one in which assured has real substantial interest in the thing insured, whereas a wager policy is one in which assured has no such interest A valued policy of marine insurance is one in which the parties have agreed on the value of the subject matter of the insurance, whereas an open or unvalued policy is one in which the parties have stated no sum as the value of the interest, but have left amount to be proved in the event of a loss A voyage policy is one which covers a loss on a trip between designated termini whereas a time policy limits the risk to a specified period of time A mixed policy has elements of both voyage and time policies A floating or running policy is one in which the underwriter agrees to insure property of the insured the particulars of which are to be subsequently determined as provided in the policy

The difference in form between a valued and an unvalued policy is that in a valued policy the blank in the valuation clause is filled up with the sum at which the parties agree to value the subject-matter insured, whereas in an unvalued policy it is left blank The difference in legal effect between the two policies is that in the case of an unvalued policy the value of the subject-matter insured is not admitted but has to be subsequently ascertained whereas in the case of a valued policy, unless it is voidable on the ground of fraud or for some other reason, the value fixed by the policy is, as between

1 *M Mohan Lal Faiza v Wood Trading Co* I L R (1960) 1 Punj 105 1961 Punj 234

2 Marine Insurance Act 1906 6th Ed W 7 C 41

3 S 2 Marine Insurance Act 1906

4 *Holman & Sons Ltd v Merchants Marine Insurance Co Ltd* (1919) 1 K B 383 *Grindley & Co Ltd* (1943) Kar 491 213 I C 151

5 *Ahmad Shah Fazal Rahim v* 1944 Sind 90

the insurer and the assured, conclusive of the value of the subject intended to be insured whether the loss is total or partial But valuation can be opened to show that part only of the subject intended to be valued in the policy was actually at risk The question as to what was intended to be valued in the valuation clause depends upon the intention of the parties, and that intention is to be ascertained from the words of the clause, having regard to the circumstances under which the contract of insurance was made [1]

Loss due to perils of seas, a question of fact —Where there is an accidental incursion of sea-water into a vessel and in a manner where sea-water is not expected to enter in the ordinary course of things and there is consequent damage to the thing insured, there is *prima facie* a loss by perils of the seas The accident may consist in some negligent act such as improper opening of a valve, or a hole made in a pipe by mischance, or it may be that sea water is admitted by stress of weather, or by the vessel keeling over owing to some accident or by the breaking of hatches or other coverings It is the fortuitous entry of the sea water which is the peril of the sea in such cases Whether in any particular case there is such a loss is a question of fact On any voyage, the ship may, though not necessarily, encounter a storm, but if in consequence of the storm cargo is damaged by the incursion of the sea it would be a question of fact whether the damage was or was not due to a peril of the sea In such a case one has to take a broad common-sense view of the whole position It cannot be predicated that where damage is caused by a storm even though its incidence or force is not exceptional, a finding of loss by perils may not be justified Even where the ventilators of a ship during voyage are closed to prevent incursion of sea-water and the closing of the ventilators damages the rice cargo by causing it to heat and ferment, the damage is recoverable as a loss by perils of the sea [2] In the same case it has been observed that even though such a loss is not strictly recoverable as a loss by perils of the seas, it is within the general words 'all other perils, losses and misfortunes, etc ,' contained in the Marine Insurance Policy

The term "perils of the seas," as used in a marine policy, does not include every casualty which may happen to the subject-matter of the insurance on the sea , it must be a peril of or due to the sea It does not, for instance, cover fire or capture at sea, nor any loss proximately caused by insects, or the wilful throwing away of a ship Again, unless the policy otherwise provides, it will not cover damage done by the bursting of the air-chamber of a donkey-engine, owing to a valve being closed which ought to be kept open whereby water is forced up into the air-chamber and causes an explosion Speaking generally, the term "perils of the seas" refers only to fortuitous accidents or casualities of the seas, and does not include the ordinary action of the winds and waves [3]

Marine policies, construction of —Marine policies are to be construed in the same way as other commercial documents The general rule is that they are to be construed to further the intention of the parties rather than to frustrate it The sense and meaning of the contract has to be gathered from the terms therein Such terms are to be read in their plain, ordinary and

1 See Halsbury's Law of England Vol. 22 Simond's Edn pp 13 and 14

2. *Canada Rice Mills* v *Union Marine & General Insurance Co Ltd* 1937 I C 267 1941 P C 68 1941 A C 55 P C (1940) 4 All E R 169

3 See *Schloss Brothers* v *Stevens* (1906) 2 K B 665 C A , *P Samuel & Co Ltd* v *Dumas* 1924 A C 431 *Cohen Sons & Co* v *National Benefit Assurance Co Ltd* (1924) 40 T L R 347 and Halsbury's Laws of England Vol 22, Simond's Edn pp 8 9 74—79

popular sense unless they have acquired any special meaning in the usage of trade or the context unequivocally points to mean in some other special or peculiar sense [1] As between printed and written words greater weight is to be given to the latter as they are the immediate terms chosen by the parties in preference to printed ones which are to be struck out when they appear to be inconsistent with written words [2] When the words are ambiguous one has to look at all the surrounding circumstances at the time of the making of the contract Such surrounding circumstances may be the act, conduct and course of dealing of the parties [3] Again where technical words or geographical terms are used evidence may be adduced to show that they differ from their technical or geographical import in insurance business and in that case a secondary meaning should be given effect to [4]

There are also certain special rules of construction which are often applied to insurance policies Thus the rule of *ejusdem generis* is applicable to construe words as "or other" when preceded by a particular enumeration of causes So also the maxim *verba chartarum fortius accipiuntur contra proferentem* is applied when an ambiguity cannot be removed by any other rule of construction It has been said that in dealing with the construction of policies, whether life fire or marine, an ambiguous clause must be construed against rather than in favour of the insurer [5]

Custom or usage plays an important role in construing marine insurance contracts Custom or usage is admissible in evidence to explain any ambiguous terms in the contract By doing so incident to contract may also be added to But the admissibility of evidence in this regard is subject to two conditions, namely, (1) the usage must not be inconsistent with the express terms of the contract and (2) it must be notorious and general in insurance business or in particular trade to which the contract relates and not unreasonable Such usage need not be one of the whole mercantile world of which the Court would take judicial notice, nor is it material that the trade itself is of recent origin [6]

Words 'lost and not lost' construction of—In marine insurance policy, the words lost or not lost' which are wholly technical in their nature are used for situations where a policy of insurance has been effected after the goods have been laden on board the ship When the insurance is 'lost or not lost' the thing insured may be irrecoverably lost when the contract is entered into, and yet the contract will be valid It is a stipulation for indemnity against past as well as future losses, and the law upholds it [7]

"Losses and misfortunes' how to be construed—Merchants insure the goods with the company to cover any risk in their being safely landed at the port

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1 *Royal Exchange Assurance Corporation v Sjofartsverkens Aktiebolaget Vega* (1901) 2 K B 567 Halsbury's Laws of England, Vol 11, p 381

2 See *G H Renton & Co Ltd v Palmyra Trading Corporation* (1956) 1 Q B 462 C A (1956) 1 All E R 209 affirmed in (1957) A C 149 H L (1956) 3 All E R 957

3 *Bank of New Zealand v Simpson* (1900) A C 182 (P C) ; *Hillyer Brothers & Co Ltd v Public Works Commissioner Public Works Commissioner v Hillyer Brothers & Co Ltd* (1926) A C 276 P C

4 *Hillyer v Northern Marine Insurance Co* (1933) 13 App Cas 717 H L *Constable v Noble* (1810) 2 Taunt 403 *Uhde v Walters* (1811) 3 Camp 16

5 *Re Etherington and Lancashire and Yorkshire Accident Insurance Co* (1904) 1 K B 591 C A *see* also the cases cited under construction of fire insurance policies' at pp 54 to 58 and construction of life insurance policies at p 47

6 *See* Halsbury's Law of England Vol 11 pp 184-185 and *Vallance v Dewar* (1808) 1 Camp 503 *Provincial Insurance Co Ltd v Crowder* (1927) 27 Ll L Rep 145 *see* also Arnould Marine Insurance 14th Edn S 57

7 *M Mohan Lal Kalra v Wood Trading Co* 1911 Punj 234

of destination and if the goods are not so landed when once they were put on board, and if the loss of goods has arisen, then certainly it is 'a loss and a misfortune' which is covered by the terms of the insurance policy The insurance company cannot therefore, be exonerated from its liability to honour its obligations to the insured, in the case of total loss of goods insured [1]

Loss, partial, total or constructive, difference —A loss in respect of insured goods may be either total or partial Any loss other than a total loss is a partial loss A total loss may be either an actual total loss or a constructive total loss In the case of an actual total loss, which is also known as absolute total loss the assured is entitled to recover from the underwriter the whole amount covered by the policy without giving any notice of abandonment But in the case of constructive total loss the assured has the option to elect to treat the loss as a total loss or partial loss and hence he cannot recover for a total loss unless he has given due notice of abandonment Where by reason of the perils insured against, the assured is permanently and irretrievably deprived not only of all present possession and cantrol over the thing insured, but of all reasonable hope or possibility of ever ultimately recovering possession of it, it will be a case of absolute total loss

If there is anything to abandon abandonment must take place and in such cases the loss will be a constructive total loss Such a loss generally takes place when the subject is not wholly destroyed but its destruction is rendered highly probable, or where its recovery though not utterly hopeless is exceedingly doubtful Where the assured is deprived of the possession of his goods by a peril insured against and it is unlikely that he can recover the same or that the cost of recovering the goods or repairing the damage to the same would exceed the value of the goods themselves, then also it may be said that there is a constructive total loss In all such cases of constructive total loss the thing assured or at least a part of it is supposed to exist in specie and there is a possibility however remote of its value being in some way affected by the measures that may be adopted for the recovery or preservation of it The expression in specie" is to be understood in a business sense Goods arriving in an unmerchantable condition are considered to have lost their species although they may not have changed to anything else and cannot be said to have ceased to exist If the goods recovered are merchantable and capable of being used for the purposes for which goods of their species are ordinarily used it has to be taken that the goods have been recovered in specie and that there has been no absolute total loss or even constructive total loss [2]

A constructive total loss is a device intended to subserve the purpose of indemnity by enabling the assured, when by insured perils the postulated danger of loss of deprivation is caused to disentangle himself, subject to definite limits and conditions from the danger and throw the burden upon the underwriters As observed above there are two main grounds on which a constructive total loss may be founded, namely, (1) when the assured is deprived of the possession of the insured property in circumstances which make it unlikely that he can recover it within any assignable time, *e g* it may be captured by the enemy or by the assured's own Government or by pirates or a ship may he deserted by the master and crew, (2) it may be so

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1 *Home Insurance Co Ltd* v *Ramnath & Co* (1955) 2 M L J 125 1955 Mad 602 *see* also *Indian Trade and General Insurance Co Ltd* v *Bhailal Manekbai Desai* 55 Bom L R 874 (1953) 23 Com Cas (Ins) 21 fire insurance policy

2 *Hajee Habeeb* v *Commercial Union Assurance Co Ltd* , 1952 Trav Co 58

(3) Contingency insurance, which will include (*a*) fidelity insurance, (*b*) debt insurance, (*c*) loss of profits insurance, and (*d*) insurance against the outbreak of war

Besides there are other kinds of insurance, such as, Collision insurance, Confiscation insurance, Embezzlement insurance, Credit insurance, Cyclone and Tornado insurance, Hail insurance, Health insurance, Industrial insurance and the like [1]

17 **Motor Insurance**—Motor insurance or more precisely called motor vehicle insurance may include insurance against loss of, damage to, or loss of the use of, a motor vehicle and its equipment, whether caused by fire, explosion, theft or collision, liability for damage to persons or property through operation of the vehicle hazards incident to transporting the vehicle by land or water, or other insurable hazards A full coverage policy, as respects insurance on a motor vehicle, means a policy which insures against risks of fire, theft, collision, property damage and indemnity on the owner's liability [2]

By its nature motor insurance is a composite insurance which covers both liability and contingency insurance Apart from it, such insurance is compulsory under the provisions of the Motor Vehicles Act (IV of 1939) Chapter VIII of the said Act deals with insurance of motor vehicles against third party risks Section 94 of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by this person or that other person, as the case may be, a policy of insurance complying with the requirements of the said chapter of the Act Requirements of policies and limit of liability have been provided in section 95 of the Act Such requirements are as follows

(1) that the policy of insurance must be issued by a person who is an authorised insurer, *i e*, who has complied with the requirements of the Insurance Act, 1938, or by a co-operative society permitted under section 108 of the Motor Vehicles Act, 1939, to transact the business of an insurer, and

(2) that the policy should insure the person or classes of person specifically mentioned therein up to the limit provided under the Act against any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place

The limits of liability provided under the Act are—

(1) in case of a goods vehicle, a limit of twenty thousand rupees in all,

(2) in case of a passenger carrying vehicle, a limit of twenty thousand rupees for persons other than passengers and a limit of the like amount in all for passengers, four thousand rupees for an individual passenger when the vehicle is to carry six passengers and two thousand rupees when the number to carry is more then six, in calculating the number of passengers the driver in each case is to be excluded,

(3) in case of any other class of vehicle the amount of the liability incurred

1 *See* Halsbury s Laws of England Vol 22 pp 184-185 and 44 C J S pp 474-481

2. 44 C J S p 492.

But a policy under the Act shall not be required—

(i) to cover liability of the death of the employee of a person insured when such death arises out of and in the course of his employment or to any such employee—

(a) engaged in driving the vehicle, or

(b) in case of a public service vehicle, engaged as a conductor or ticket-examiner, or

(c) in case of a goods vehicle, being carried in the vehicle, or

(ii) to cover liability of death or bodily injury to a passenger entering or mounting or alighting from the vehicle except where such vehicle is one in which passengers are carried for hire or reward, or

(iii) to cover any contractual liability

Apart from the statutory policy, a third party liability policy may provide—

(a) cover against legal liability for bodily injury to or death of any third party even excluded by the Act,

(b) cover against damage to or destruction of a third party's property,

(c) cover against fire and theft of the vehicle itself including accessories, and also against loss or damage howsoever caused,

(d) cover against loss of profits in case of a profit-earning vehicle,

(e) cover against personal accident sustained by the assured himself by reason of his use of the car,

(f) cover against liability to any preson driving the insured car with the permission of the assured,

(g) cover to the assured while driving any other vehicle

Policies of motor insurance covering third party liability may be limited or general or fully comprehensive [1]

Principles applicable —Like fire and marine insurance contracts, a contract of motor insurance is a contract of indemnity but such indemnity relates to the insurance of the car or the vehicle as an insurance of property and to third party liability as in liability insurance and hence principles applicable to those kinds of insurance are applicable to such indemnity But where a policy provides for the death or disablement of the assured himself, the contract contained therein is not in the nature of an indemnity In such a case the contract partakes the nature of life insurance or personal accident insurance and hence principles governing those kinds of insurance will be applicable to such a policy [2]

Clauses in a policy, construction of —Where a policy contained a clause that the foregoing indemnity shall be available in the same manner and under the same conditions as it is available to the insured to any person or persons while riding in or legally operating the automobile for private or pleasure

1 Halsbury's Laws of England Vol 22 pp 353-354 2. *See* Halsbury's Laws of England Vol 22 p 354

purposes with the permission of the insured these wide words in the policy would not entitle anyone to claim the benefit of the policy even if answering the general description unless it is established that the person who directed insurance to be effected actually intended to cover that particular person or at least some one who should answer that description The mere generality of the language is not in itself sufficient, nor was that other party a party to the contract even in equity as a beneficiary as there was no clear proof to show that the insured intended to constitute himself a trustee for that other in entering into the contract, either specifically or as a member of a class Even if it was assumed that 'any person' was a *cestui que trust* in regard to the insurance, the contracting party, *i e*, the insured, had no insurable interest in the former's personal liability for damages and the contract would be void in respect of that particular risk being a wagering contract [1] Thus, a policy of insurance effected by *A* which provides that either on the death of *A* or at the expiration of a particular period, the insurer will pay the sum assured to *B* does not confer any contractual right upon *B* nor does the taking of the policy in that form operate as a trust in favour of *B* Consequently on the death of *A* or on the expiration of the specified period, the executor of *A* or *A* himself, as the case may be, are the only persons who can recover the money from the insurer and *B* has no claim to it [2]

Where there is an exception to the policy providing that the insurer will not be liable if the vehicle driven by the insured is in unsafe condition, on an accident having happened because of the insured driving such unsafe vehicle, it was held that the insurer was not liable [3] Again, where the policy provides that the company shall indemnify the insured against the legal liability in respect of death of, or injury to the passengers, the condition is for the benefit of the insured and the passenger does not become beneficiary under an implied trust The passenger being a stranger to the contract cannot sue the company for money payable under the policy [4]

Where a policy was issued subject to terms and conditions "whether inscribed on the face of the policy or endorsed thereon ' and an entry in the schedule as "carrying passengers only" was made under heading ' Used for following purposes ' and the bus was used for carrying cages of moneys and there was accident and fire, it was held that the company was absolved from the obligation [5] But where the policy nowhere mentioned that it was confined exclusively to the lorry carrying passengers only and the lorry was burnt while carrying passengers and tins of oil, it was held that the company was liable [6]

A motor insurance policy does not remain in force if there is a change of ownership of the car insured unless there is an agreement between the company and the new owner that the policy shall remain in force [7] If there be in the policy a provision which requires a transfer of ownership of the vehicle to be assented to by the insurer and only on proof of such a fact the cover will

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1 *Alice Marie Vandepitte* v *Preferred Accident Insurance Co of New York* 64 M L J 133 : 37 M L W 279 1933 A L J 373 143 I C 79 1933 P C 11

2 *Nadarshaw* v *Times of India Employees Death Benefit Fund* 33 Bom L R 720 : 139 I C 558 1931 Bom 300

3 *Marjorie Lestrange Trickett* v *Queensland Insurance Co Ltd* 70 M L J 437 43 M L W 276 160 I C 844 1931 P C 74

4 *British India General Insurance Co Ltd* v *Janardhan Vishwanath Naik* 40 Bom L R 155 175 I C 104 1938 Bom 217

5 *Sibtai Hassan* v *Guardian Assurance Co Ltd* 13 Luck. 474 170 I C 451 1937 Oudh 476

6 *Gopal Singh* v *Mutual Indemnity and Finance Corporation (India) Ltd* 1937 A L J 442 170 I C 983 1937 All 535

7 *Des Raj Pahwa* v *Concord of India Insurance Co Ltd*, 1951 Punj 114

enure to the benefit of the transferee from the owner who had taken out the policy such a provision will not militate against any of the existing provisions of the Motor Vehicles Act The law does not make any provision to counteract the effect of such a clause Where no approval of a transfer is obtained from the insurer but the vehicle is registered by the Transport Authorities in the name of the transferee, the result is that the vehicle runs without a cover of a policy Such user of the vehicle without a cover of insurance merely makes the person using it liable for an offence under section 94 (1) read with the relevant portions of Chapter IX of the Motor Vehicles Act [1]

But a policy of insurance does not lapse the moment the insured parts with the ownership of the vehicle Sale of the vehicle is not a ground under section 96 of the Motor Vehicles Act to avoid a policy of insurance However where the owner of a vehicle which is insured under the Act against third party risks sells the same to another but transfer of ownership or transfer of the policy has not yet taken place, and an accident occurs the insurance company cannot escape its liability under the policy [2]

Again where one of the conditions of the policy was that "the company will indemnify the insured against loss or damage to the motor car whilst in transit by road, rail, etc," the word loss' should be construed to mean the loss of the article in bulk, either by disappearance or destruction But where the article was known to be in existence and was also available on conditions which were within the power of the insured but of which he chose not to take advantage, the insurer could not be made liable under the policy Further, the loss should occur while the car was in transit and the burden of proving that such loss had occurred was on the person alleging such loss [3]

A policy of insurance of a motor car provided, that the owner, of the car would be indemnified against loss or damage to the car The owner sold the car to *H* in return for a cheque which proved worthless He resold it to another and disappeared There was no evidence to show that subsequent purchaser had knowledge of *H*'s fraud Owner of the car claimed compensation of the loss of the car under the insurance policy He could not claim under the policy because by sale he had parted with the car and the owner did not suffer loss of car The loss was the loss of only sale proceeds [4]

Knock for-Knock agreement and excess and no-claims bonus clauses.—'Knock for-Knock' agreement and 'excess and no-claims bonus' clauses have their origin in the insurance of the vehicle itself The 'Knock-for-Knock' agreement is operative only between insurers where accident involves more than one insured vehicle In such an agreement each insurer is responsible for the damage to the car irrespective of the consideration as to who is legally responsible for causing the damage But such an agreement cannot be enforced against the individual assured [5] The excess and no-claims bonus clauses are of two forms namely (1) where the clause provides that the liability for damage up to a specified amount shall be borne by the assured, and (2) where it allows a rebate of premium in the form of a bonus if no claim is notified The obj

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1 *Pir Singh* v *Smt Manki Rathi Banerjee* 1956 Cal 555

2. *Mohd Usman Insurance Co Ltd* v *Mohamad Mustafa Bukhsh* (1960) 2 M L J 292 : 73 M L W 485 : (1960) 3 Com. Cas (Ins) 25

3 *P Datta* v *Union of India* 1958 M P C. 155 : 1958 M P L J 192 : 1958 Jab. L J 235 : (1958) 29 Com Cas. (Ins) 19 : 1958 M P 297

4 *Essinger* v *General Accident Fire and Life Assurance Corporation Ltd*, (1955) 2 All E.R. 807

5. See *Morley* v *Moore* (1936) 2 All E.R.

of these clauses is to avoid a multiplicity of claims for minor damage to the insured car [1]

18 Burglary insurance —Burglary insurance is also known as robbery and theft insurance It may be defined as insurance against loss of property by the depredations of burglars and thieves It is regarded as a branch of casualty insurance [2] A policy of burglary insurance is not confined to loss by burglary alone but losses by analogous crimes, *e g* house-breaking are also covered in it Where the perils insured against are described in the technical terms of the criminal law, there is presumption that the terms used are intended to bear their technical meaning [3] But this presumption is rebuttable specially where the policy defines the word 'burglary,' and in that case the meaning as given in the policy should be given in preference to the technical meaning [4]

When concealment of material facts is alleged in defence to claim under a burglary policy, the insurer must prove (*i*) that the facts alleged to have been concealed by the assured were true, (*ii*) that they were material facts, and (*iii*) that they were within the special knowledge of the assured [1] The test to determine materiality is whether the fact has any bearing on the risk undertaken by the insurer If the fact has any bearing on the risk, it is a material fact, if not it is immaterial Thus, where a policy contained, *inter alia*, the question Have you ever sustained a loss by fire, burglary, house-breaking and larceny, to which the assured replied in the negative The fact of burglary having been committed five years back in the ground floor of the same premises had no bearing on the risk undertaken by the insurer by insuring goods in the first floor of the same premises So also the fact of the previous burglary was not a material fact [5] Where the policy provided that the proposal and declaration should be the basis of the contract and should be considered as incorporated therein, the insurer could not repudiate the claim without repudiating the policy on the grounds that there was a material misstatement or non disclosure in the proposal form relating to the value of the contents [6]

19 Industrial insurance —Industrial insurance is sometimes called people's insurance, prudential insurance or family insurance This type of insurance had its origin in the early guilds, friendly societies or burial societies It is a sort of insurance under which small policies of accident, health or life insurance are issued in consideration of weekly payments, in contradistinction to the ordinary plan of insurance where premiums are payable yearly half yearly, quarterly or monthly This type of insurance is effected on the lives of the labouring classes for small amounts, the payments being made in weekly instalments [7] The underlying principle of industrial insurance is to provide a means whereby the labouring and more unfortunate masses may be able to carry small amounts of insurance on the payment of a small proportion of weekly wages or earnings to meet such exigencies as may

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1 See *Beacon Insurance Co Ltd* v *Langdale* (1939) 4 All E R 204 D C , *Morley* v *Moore* (1936) 2 All E R 79

2 *See* 44 C J S p 475

3 *Re Calf and Sun Insurance Office* (1920) 2 K B 366 C A *Lake* v *Simmons* (1927) A C 487 H L.

4 See *Re George and Goldsmiths and General Burglary Insurance Association Ltd* (1899) 1 Q B 595 C A

5 *Rohini Nandan Goswami* v *Ocean Accident and Guarantee Corporation Ltd* 1960 Cal 696

6 *West* v *National Motor and Accident Insurance Union Ltd* (1955) 1 All E R 800

7 *See* 44 C J S , p 480

and usually do arise in case of death [1] This character of insurance has for its object not so much the creation of a fund to provide for the future support and maintenance of the family or near relatives of insured or to augment his estate, as ordinary life insurance does, but mainly to provide a reasonable fund with which insured may procure in his last sickness needed aid by way of nursing medical attention, etc , and to secure him a decent burial [2]

Industrial insurance has also been called a somewhat specialised form of life insurance where premiums are payable usually in very small sums at short intervals Under the Industrial Assurance Act, 1923,[3] industrial insurances are called those insurances where the premiums are received by collectors and are payable at intervals of less than two months [4] These insurances are subject to certain special statutory provisions [5] The industrial assurance legislation applies to registered friendly societies which carry on industrial assurance business and such societies are known as collecting societies [6]

The industrial insurance is now governed by the Employees State Insurance Act (XXXIV of 1948) which provides for certain benefits to employees in case of sickness maternity and employment injury and for certain other matters in relation thereto under section 38 of the said Act, all employees in factories or establishments shall be insured in the manner provided by the Act The insurance is effected by contributing at the rates mentioned in the schedule of the Act both by the employers and the employees and such contributions are paid weekly

The insured persons or their dependants, as the case may be, are entitled to the following benefits

(a) sickness benefit, *i e* periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner,

(b) maternity benefit, *i e* periodical payments in case of confinement to an insured woman, certified to be eligible for such payments by a prescribed authority

(c) disablement benefit, *i e* periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee and certified to be eligible for such payments by a prescribed authority,

(d) dependant s benefit *i e* periodical payments to such dependants of an insured person who dies as a result of an employment injury sustained as an employee as are entitled to compensation under the Act and

(e) medical benefit *i e*, medical treatment for and attendance on insured persons [6]

The right to receive any payment of any benefit under the Employees State Insurance Act 1948 is neither assignable nor transferable, but when a person is entitled to any of the benefits provided by the Act he shall not be

1 *Prudential Assurance Co v Hall* 49 P 2d 1063; *Prudential Assurance Co v Howell* 2 9 Pac Rep 731

2 *Kirkpatrick v John Hancock Mutual Life Insurance Co* 111 S W 2nd Series 1125 *see also Plassmeyer v Metropolitan Life Insurance Co* 223 Mo App 638

3 13 and 14 Geo 5 c 8

4 *See* the Industrial Assurance Acts 1911 to 1948

5 *See* Halsbury s Laws of England Vol 1[1] pp 4—6 and Vol 21 P 72

6 *See* S 46 of the Act

entitled to receive any similar benefit admissible under the provisions of any other enactment Thus, this provision is wide enough to prevent a dependant from receiving any benefit similar to "dependant's benefit" which he is entitled to receive under any other enactment, *e g*, Workmen's Compensation Act But it is not wide enough to prevent a dependant from recovering damages from a third person who is liable in tort to pay damages for causing death by his negligence [1]

20 Policy holder —The expression "policy-holder" has been defined in section 2 (2) of the Insurance Act, 1938, to include an assignee to whom the whole of the interest of the policy-holder in the policy is assigned once and for all but excluding him whose interest in the policy is defeasible or is for the time being subject to any condition

The policy-holder has no right or specification or immediate control over the funds of the insurance company Even in cases where the contingency upon which payment depends has determined and the policy money has become due and payable and there is default in such payment, the grantee cannot by reason of such default resort immediately to the property of the company but must resort only to legal process, which might in its final result when the process is executed affect the property of the company An insurance company cannot also be deemed to be a trustee of the policy moneys of its policy-holders even when the form of the policy creates a charge upon the funds of the company without any direct promise to pay An insurance company is in the position of an ordinary debtor and must be treated accordingly Hence apart from the special terms of any particular trust deed it is not open to the policy-holders to take advantage of anything contained in the Articles of Association of a company, as giving them any beneficial interest or other claim to the funds of the company on the basis that the company is in the position of a trustee in relation to the fund

It may be that the policy holders have a right to intervene if the company dissipates or wastes or diverts the funds out of which they expect to be paid the amounts assured to them on the maturity of their policies But in the absence of any proof of wastage or dissipation, the form of investment is a matter for the directors to decide, subject to their powers in the matter of investment [2]

Where the shareholder of an insurance society is also a policy-holder, his rights and liabilites would be governed by separate sets of conditions and rules His rights as policy-holder would be governed by the terms of the policy and his rights as shareholder would be governed by the Articles of Association the policy is irrelevant when the latter rights are to be considered [3]

The expression 'policy-holder' is defined in the English Insurance Companies Act 1958 to mean the person who for the time being is the legal holder of the policy for securing the contract with the insurance company, or, in relation to bond investment business means the person who for the time being is the legal holder of the bond, certificate, receipt or other instrument evidencing the contract with the company, and—

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1 *Regional Director Employees State Insurance Corporation* v *Dyer Meakin Breweries Ltd* 1958 Punj 136 see also S 61 of the Act

2 *Duraiswami Iyengar* v *United India Life Assurance Co Ltd* I L R (1956) Mad 1014 (1956) 1 M L J 344 69 M L W 37 (1956) 26 Com Cas (Ins) 12 1956 Mad 316 *see* also *Alderbert* v *Kearns* (1864) 1 Hem and M 681

3 *Hindusthan Co operative* v *Nathu* 1946 Nag L J 197

(a) in relation to life assurance business or industrial assura
business, includes an annuitant, and

(b) in relation to accident insurance business, motor vehicle insuran
business or marine, aviation and transit insurance business
includes a person to whom, under any policy, any sum is d
or a weekly or other periodic payment is payable, and

(c) in relation to employers' liability insurance business, includes a
person to whom, under any policy, any sum is due or a weekly
payment is payable

A policy-holder may be given a right to participate in the profits of a company and in such a case he is given the right to participate only in such profits as are properly accounted Profits from the surplus fund of the company after payment of losses, if any, will be available for distribution among the share and policy-holders [1] But where the company undertakes to pay the policy-holder dividends' described as 'profits' according to a scheduled scale, such profits could not be contingent on their being a surplus nor could they be dependent on profits at the rate then prevailing [2]

It has been observed that the 'legal holder of the policy' means the person who has the legal title to the policy moneys, and therefore includes a trustee, or legal mortgagee but not a mere beneficiary, an equitable mortgagee or the owner of the equity of redemption So also it will include a solicitor exercising his lien for costs upon his client s policy [3]

21 'Court' —The word 'Court' is defined in clause (6) of section 2 of the Insurance Act 1938 to mean the principal Civil Court of original jurisdiction in a district, and to include the High Court in exercise of its ordinary original civil jurisdiction

Forum, determination of —Where an insurance company's agent at *E* was only authorised to canvass for proposals for insurance and had no authority to accept the proposals all he had to do being to see that the proposal form was correctly filled up and to send it to the head office at *C* for disposal there and the policy money was payable at *C*, the cause of action, in such a case, on the policy arose entirely at *C* Even the circumstance that when the half yearly premium became payable the company instead of sending its demand to the assured directed its local agent to collect the money from him would not change the forum to *E* [4] So also where an insurance company had its office at *B* the amount to be paid under the policy was payable at *B*, a suit on the policy was to be filed at *B* The fact that the company had a sub-agency at *K* did not give the Court at *K* jurisdiction to entertain the suit when the agent had no power to accept any offer [5]

22 Applicability —This section shall apply to Life Insurance Corporation of India established under the Life Insurance Corporation Act (XXXI of 1956) [6]

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1 *See Gee & Co v Equitable Life Assurance Co* 160 N Y 19 ; *Re National Bank of Wales* (1899) 2 Ch 629

2 *Sun Life Assurance Co of Canada v Jervis* (1944) 113 L J K B 174 MacGillivray's Insurance Law pp 92 93 *see also Co-operative Bond and Mort gage Corporation* (1910) Ch 574 for policy holder's right to present a petition for winding up *see also* S 224 of the English Companies Act 1948

4 *Bengal Insurance & Real Property Co Ltd v Lalchammal* I L R (1937) Mad 905 45 M L W 616 170 I C 279 1937 Mad 571

5 *Hari Industrial & Prudential Assurance Co* 167 I C 609 ; 1937 Sind 17 *See* section 2 (10) and section 43 of the said Act *post*

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2A [*Omitted by the Adaptation of Laws (No 3 Order 1956*]

2B (1) The Central Government may, by notification in the official Gazette, appoint a person to be the Controller of Insurance under this Act

Appointment of Controller of Insurance

(2) In making any appointment under this section, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matters and whether such person has acturial qualifications

Notes

The Controller of Insurance is also designated as Controller' The term is defined in clause (5-B) of the Act to mean the officer appointed by the Central Government to perform the duties of the Controller of Insurance under the Insurance Act, 1938 Formerly, that is, before the Insurance (Amendment) Act, 1950 the Controller of Insurance was designated as the Superintendent of Insurance

For the valid appointment of a Controller of Insurance under the Act the following conditions must be satisfied (i) that his appointment must be made by the Central Government and (ii) that his appointment must be gazetted in the Official Gazette In making the appointment of the Controller the Central Government must consider the eligibility of the person to be so appointed with regard to the following qualifications namely, (i) his experience in industrial, commercial or insurance matters, and (ii) his acturial qualifications

Under the English Insurance Companies Act, 1958, the Board of Trade has been assigned certain functions with regard to the insurance companies coming to be governed by that Act Thus copies of all accounts, balance-sheets abstracts and statements required to be made under the provisions of the said Act and any report submitted to the shareholders have to be deposited at the Board of Trade in the prescribed manner The Board's duty in this regard is to consider those documents and to communicate with the company should they appear inaccurate or incomplete[1] The Board has power to exempt any assurance company from the observance of statutory rules or to order the application of such rules in a modified form It has also power to approve the appointment of an actuary having actuarial knowledge It can also file an application for winding up of any company in the circumstances specified in sections 2 (2) and 15 (2) of the said Act

Like the Board of Trade under the English Insurance Companies Act, the Controller of Insurance under the Insurance Companies Act, 1938 has various functions They are more numerous than those of the Board His chief statutory functions and powers may, conveniently, be summarised as follows

(i) issuing and granting of, cancellation of, and renewal of certificate of registration ,

1 See S 8(2) of the said Act

(ii) certification of soundness of terms of life insurance business,

(iii) restriction on name of insurer,

(iv) power to inspect or to require from the Reserve Bank any information relating to any security deposited with such bank under the Act,

(v) power to extend time for preparation and submission of actuarial report and abstract from three years to four years and to modify and vary certain regulations and to exempt therefrom in respect of miscellaneous Insurance business,

(vi) power in relation to accounts, statements and abstract, namely (a) to require further information, (b) to examine any officer of the insurer on oath, and (c) to order revaluation,

(vii) power to take such steps according to his discretion for the inspection or verification of the assets invested,

(viii) power to investigate the affairs of any insurer when so ordered by the Central Government and to report to that Government,

(ix) power to sanction amalgamation and transfer of insurance business,

(x) power to issue to any person a licence to act as an insurance agent and to register any person as principal or chief agent,

(xi) power to settle claims on small life insurance policies, i.e., where the sum does not exceed two thousand rupees,

(xii) power to exempt any director of a subsidiary company of the insurer from any disqualification imposed,

(xiii) power to report to the Central Government regarding an insurer carrying on life insurance business prejudicial to the interests of the policy-holders,

(xiv) power to issue directions to the Administrator appointed by the Central Government as to his powers and duties,

(xv) power to report to the Central Government regarding termination of appointment of administrator,

(xvi) power to present petition of winding-up when authorised to do so on grounds mentioned in section 53 (b) (i-iv) of the Act,

(xvii) power to apply to the Court for an order reducing the amounts of the insurance contractors in liquidation or insolvency proceedings,

(xviii) powers over Provident Societies in Part III of the Act, such as,

(a) to issue or to refuse to issue a certificate of registration,

(b) to cancel the registration of a provident society or to apply to the Court and obtain sanction for cancellation of the registration

(c) to issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated or for any other cause.

(*d*) to grant a certificate of renewal of registration ;

(*e*) to direct any provident society to change its name within the time fixed by him ;

(*f*) to exercise all powers as are exercisable with regard to insurers, with regard to informations and reports, etc ;

(*g*) to register amendment of rules of any provident society ;

(*h*) to sanction any scheme of amalgamation and transfer of insurance business ;

(*i*) to apply to the Court for winding up or for an order reducing the amount of insurance contracts ;

(*xix*) power to delegate any of his powers or duties to any person subordinate to him ;

(*xx*) to call for any information relating to insurer's insurance business, and

(*xxi*) to order exemptions of the Act as provided in section 118 (*d*) (*i-iii*) of the Act

Applicability —This section will apply to the Life Insurance Corporation of India [1]

PART II

PROVISIONS APPLICABLE TO INSURERS

Prohibition of transaction of insurance business by certain persons

2C (1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of one year from such commencement, continue to carry on any such business unless he is—

(*a*) a public company, or

(*b*) a society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or

(*c*) a body corporate incorporated under the law of any country outside India not being of the nature of a private company.

Provided that the Central Government, may by notification in the Official Gazette exempt from the operation of this sub-section to such extent for such period and subject to such conditions

1 See note 22 under S. 2, *infra*.

may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of section 2 or for the purpose of carrying on any general insurance business

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time

(2) Every notification issued under sub-section (1) shall be laid before Parliament as soon as may be after it is issued

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Public company*
4 *Society registered under the Co-operative Societies Act, 1912*
5 *Company incorporated outside India*
6 *Power of the Central Government, Provisos*

1 Legislative changes—Section 2C has been newly inserted by Act XLII of 1950 The word 'India' is substituted for the words "the States" by Act LXII of 1956

2 Object and scope—The object of the section is to prohibit carrying on insurance business in India by any person or insurer The words person and insurer' occurring in the section are interchangeable terms as the word 'person will mean 'insurer' and *vice versa* The prohibition contemplated under the section is the carrying on any class of insurance business *i e* the classes of insurance business contemplated under the Act Hence fire, marine, life general and miscellaneous insurance businesses will come within its fold Further, the prohibition contemplated under this Act is a point of time to be of two stages that is when such business is in contemplation but has not commenced and when the business was being carried on In case of the former, the person or the insurer must not commence the said business after the commencement of the Insurance (Amendment) Act, 1950 and in case of the latter he must stop the carrying on of that business after the expiry of one year from the said date unless he, in both cases satisfies the conditions laid down in the section that is to say he is a public company or a co-operative society or an incorporated body not in the nature of a private company when its incorporation is effected outside India under any law of that country

The scope of the section has to some extent been widened by the two provisos to the section But the extended scope contemplated under the provisos is subject to the Central Government's conditions and the length of time as provided in the second proviso General insurance business, that is fire marine or miscellaneous insurance businesses and superannuation allowance and annuity insurance business included as a kind of life insurance business, will come under this extended scope and no other insurance business, that is other kinds of life insurance business cannot claim the extended scope contemplated under the said two provisos The action of the Central Government in this regard is subject to the scrutiny by the Parliament This is evident from sub-section (2) of this section

In short the principal object of the section is to prohibit individuals firms and private companies from carrying on insurance business in India It seems therefore, that the definition of insurer as being individuals and

unincorporated body of individuals and private companies as given under clause (9) of section 2 of the Act, if not becoming inconsistent, has become redundant for the purposes of the Act, at least from the periods of time contemplated in the section

3 Public company —*See* Note 6 (*d*) of section 2

4 Society registered under the Co-operative Societies Act, 1912 — A society which has as its object the promotion of the economic interests of its members in accordance with co-operative principle, or a society established with the object of facilitating the operations of such a society may be registered under the Co-operative Societies Act (II of 1912) with or without limited liability Apart from registered society, a society which consists of at least ten persons above the age of eighteen years and whose object is the creation of funds to be lent to its members may be registered as a co-operative society under the Act [1]

A co-operative society registered under the Act is a corporation It has legal personality It has to be sued in its corporate name only The liability of a co-operative society duly registered cannot be equated to the liability of the members of its managing committee Nor are the members of the managing committee competent to represent the co-operative society [2] There is no bar within the four corners of the Co-operative Societies Act for a joint family to be a member of the co-operative society [3] The by-laws of a co-operative society correspond to the Articles of Association of a company registered under the Companies Act and the Managing Committee of a co-operative society corresponds to the Board of Directors of a company Both in the case of a co-operative society and in the case of a company registered under the Companies Act, the general principles are the same The shareholders constitute the General Body But so long as the committee is there, the General Body cannot override the powers of the committee and usurp its functions [4]

Under this section a co-operative society registered under Act II of 1912 is permitted to carry on any class of insurance of business after the commencement of the Insurance (Amendment) Act, 1950, just as a public company under the Companies Act, 1956

In England a large volume of insurance in small amounts is effected with friendly societies These societies have long been controlled by statutory provisions beginning as late back as 1793 Societies which might be registered under the Friendly Societies Act, 1896 were friendly societies cattle insurance societies benevolent societies working-men's clubs, old people's home societies and similar such societies Friendly societies are defined by the Friendly Societies Act, 1908, as societies for the purpose of providing by voluntary subscriptions of the members thereof with or without the aid of donation for relief or maintenance of members and relations during sickness, old age, widowhood or when out of employment or in distressed circumstances They also provide for insurance against fire to any amount not exceeding £ 15 of the tools or implements of the trade or calling of members or for money to be paid on the birth of a member's child or on the death of a member The Friendly Societies Act 1908 as amended by the Friendly Societies Act 1955 and the Industrial and Friendly Societies Act, 1948 have prescribed certain

1 *See* sections 4 and 6 of the Act
2 *Narayana Pillai v Ramara Pillai* 1960 Ker L T 1288 1960 Ker L J 1442 1961 Ker 258
3 *Mendhasol Co operative Society No 2 v Radhashyam*, 24 Cut L T 395
4 *Kumaran v State of Travancore Cochin* I L R (1951) Trav Co 609 1952 Trav Co 9

limits of the amounts which might be insured or paid by a registered friendly society Thus in case of assurance of an annuity the limit prescribed is £ 50 per annum or a gross sum of £ 200 The limit of these amounts was raised to £ 500 in respect of gross sum and to £ 104 by way of annuity payment A society assuring a certain annuity is not entitled to registration, unless its tables of contributions are certified by an actuary of the National Debt Commissioners or by some other actuary approved by the Treasury Further, a society in order to be registered must consist of at least seven members It may be noted that the Insurance Companies Act, 1958, does not apply to registered friendly societies or trade unions

Special provisions have been made in Part IV of the Insurance Act, 1938, for 'mutual insurance company, and 'Co-operative Life Insurance Societies which have been dealt with in sections 95 to 101 of the Act[1]

5 Company incorporated outside India —In respect of a foreign company *i e* company incorporated under the law of any country outside India, the prohibition envisaged under this section is a company of the nature of a private company Before the English Companies Act, 1907, a private company was not recognised in law as a form of corporate organisation But the term private company" was known in practice and was used in the same descriptive manner as 'close corporation" in the United States of America as is known now-a-days meaning a company whose shares are intended to be held by a restricted group of persons and cannot be acquired freely by members of the public, as late back as 1877 when Sir Francis Palmer published his "Private Companies and Syndicates"[2] Even the English Companies Act 1900, drew a distinction between companies offering their shares for subscription to the public and others The references of 'private companies occur in early judicial decisions in *Re British Seamless Paper Box*[3] In the English Act of 1907 a statutory definition of a private company was given for the first time The Act was amended by subsequent legislation and the definition of a private company is now re-enacted in section 28 of the English Act of 1948

The modern private company serves two purposes, namely, (*i*) it enables a family trading business of obtaining the advantages of corporate trading and (*ii*) it refrains from complying with the strict requirements obligatory for public companies The English Act of 1948 contemplates two kinds of private companies, *viz* (*i*) ordinary and (*ii*) exempt private companies But the common feature of these two types is that in both the types members of the investing public cannot acquire shares in it at will and hence it limits the economic use of the company The only difference between them is that while the ordinary private companies have to attach their balance sheet to the annual return and thereby to publish it the exempt private companies are exempt from this obligation and enjoy the privilege of balance sheet secrecy The Indian Companies Act, 1956, has adopted the definition of a private company of the English Act of 1948 but it does not contemplate the two types of the English Act[4]

6 Power of the Central Government, Provisos —The Central Government has been empowered under this section to exempt any person or insurer from the operation of this section and in so exempting it has power to impose

1 See sections 95 to 101

2 (1881) 17 Ch. D 467 *Re George Newman & Co* (1895) 1 Ch 674 and *Salomon v Salomon & Co* (1897) A C 22 See Note 6(d) of S 2 at pp. 33-34

conditions and specify the period for which such exemption will continue Such power of exemption is restricted only to (1) the business of granting superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependant of such persons, and (2) the business of general insurance, *i e*, fire, marine or any kind of insurance except life insurance With regard to the general insurance business such exemption will not operate for more than three years at any one time, that is to say the exemption may be granted after the expiry of the said period of three years for another period of three years or less at the option and discretion of the Central Government Such exemption has to be made by notification in the official Gazette and not otherwise

The exemption under this section means that insurers other than public companies, co-operative societies under Act II of 1912 and foreign private companies will be able to carry on the general insurance business and business of granting superannuation allowances and annuities stated above except the other kinds of life insurance business, subject to the conditions imposed, and during the period specified, by the Central Government

Insurers to be subject to this Act while liabilities remain unsatisfied

2-D Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in India in respect of business of that class remain unsatisfied or not otherwise provided for.

SYNOPSIS

1 *Legislative changes*
2 *Insurer, meaning of*
3 *"Any class of insurance business"*
4 *"Not otherwise provided for"*
5 *Object and scope*
6 *Applicability*

1 Legislative changes—This section and the one following, *i e*, section 2 E were originally inserted as sections 2-A and 2-B by the Amendment Act XI of 1939 but were re-numbered as sections 2-D and 2-E by the Amendment Act XLVII of 1950 In enacting the two sections the Select Committee observed as follows The position of the insurer who takes up no new insurance business is not clear under the existing Act We, therefore, propose two new sections first to make it clear that an insurer is subject to the Act so long as he has insurance liabilities in British India outstanding Against the foreign insurer who closes down his business and leaves the country before the commencement of the principal Act there is no obvious remedy Proposed section 2-B (now section 2-E) will offer an inducement to remain in the country for the purpose of carrying through his business in respect of contracts he has entered into before commencement of the Act If after that date he accepts a new contract he will, by virtue of section 2-A (now section 2 D) be amenable to the Act until all his liabilities are satisfied"

2 Insurer, meaning of—In finding out the meaning of the word "insurer" in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context In view

of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances Therefore, though ordinarily the word "insurer" as used in the Act would mean a person or body corporate actually carrying on the business it may be that in certain sections the word may have a somewhat different meaning

A perusal of a few sections of the Act will illustrate that the word insurer' has been used to mean (i) a person actually carrying on business of insurance, (ii) a person who intends to carry on the business of insurance but has not actually started it, and (iii) a person who was carrying on the business of insurance but has ceased to do so Hence, as a general rule the ordinary meaning is to be given to the word insurer as is given in the definition clause, i e clause (9) of section 2 as referring to a person or body corporate etc carrying on the business of insurance, but the word may also refer in the context of certain provisions of the Act to any intending insurer or *quondam* insurer It may also be noted that it was not necessary to enact this section if the word insurer' here meant only a person actually carrying on the business of insurance because the provisions of the Act would have applied to such a person *proprio vigore* Therefore, when the word "insurer" is used in this section (section 2-D) it must mean a person who was carrying on the business of insurance but has closed it [1]

3 **'Any class of insurance business'** —There is no reason to limit the words any class of insurance business" used in this section only to a case where out of many classes of business some are closed and others are being carried on Under section 13 of the General Clauses Act (X of 1897) in all Central Acts and Regulations unless there is anything repugnant in the subject or context words in the singular shall include the plural and *vice versa* Though, therefore section 2D speaks of any class of insurance business in the singular it includes the plural also and would refer to all classes of insurance business There is no reason why if the section applies, even though the word class is in the singular to a case where three out of four classes are closed and one is continued it should not apply to a case where all four classes are closed [2]

Therefore on a plain reading of section 2 D there can be no doubt that an insurer who has closed all classes of his insurance business remains subject to all the provisions of the Act in relation to such classes so long as his liabilities in India remain unsatisfied or not otherwise provided for There is no repugnancy in the context to hold such a view The contention that section 2-D would only apply to those cases where an insurer was carrying on different classes of insurance business and had closed some of them but not all of them is untenable There is no reason why if the section applies, even

4 **'Not otherwise provided for'** —The words 'not otherwise provided for' in this section must refer to liabilities in the nature of claims against the insurer whether the insurer admits them or not and whether a decree has been finally passed in respect of them or not It is not correct to say that only those liabilities which are ascertained and either undisputed or proved being

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1 *Lanyard Fire and General Insurance Co Ltd* v *Messrs Fraser & Ross* (1960) 2 S C A 302 1959 Mad 316 and Note 5 of S 2 S C 911 (1960) 30 Com Cas (Ins) 13 1960 at pp 21 22
(1959) Mad 2 *Lanyard Fire and General Insurance Co Ltd* v *Messrs Fraser and Ross* 1
see also I L R 681 : (1959) 2 M L J 101 : 72 M L W

satisfiable the same applies to their being otherwise provided for It is true that only those liabilities, which are ascertained and either admitted or proved, can be satisfied, but it does not follow that "provision otherwise" must also be only of liabilities which are ascertained and either admitted or proved If that were so a dishonest insurer who closes his business could always get out of the provisions of the Act by repudiating all claims made against him and then saying that there are no liabilities which remained unsatisfied or otherwise unprovided for There can be no doubt therefore that when "provision otherwise" has to be made it must be with respect to probable claims also that are likely to arise out of the insurance business which has been closed [1]

It cannot be said that the liabilities of a company are provided for when there is nothing to show that a definite provision had been made for the discharge of particular liabilities remaining unsatisfied, say by constituting a fund or otherwise [2] When this section speaks of satisfaction or "provision otherwise" for the liabilities of the insurance business which is closed it contemplates such satisfaction or "provision otherwise" over and above the deposit made under section 7 of the Act [3]

5 **Object and Scope** —The object of the section is to protect the interest of the policy-holders and the general public and the intention underlying the enactment is to ensure that probable claims arising out of the insurance business that is closed are provided for before the insurer who has closed his business can say that he is not governed by all the provisions of the Act

In order that this section may be workable, all that is required under it is that the Central Government should be satisfied after such *prima facie* inquiry as it considers necessary that there are reasons to believe that the liabilities of the insurer who has closed his business remain unsatisfied or not otherwise provided for and in coming to this *prima facie* conclusion the Central Government may make enquiry from the insurer with respect to complaints that it may have received against him But the fact that the order does not on the face of it show that the Central Government considered this aspect of the matter would not make it bad, if in subsequent proceedings taken to challenge it, it is shown that there were materials before the Central Government which would justify its coming to the *prima facie* conclusion that the liabilities had not been satisfied or otherwise provided for [4]

6 **Applicability** —This section has been made applicable to the Life Insurance Corporation of India [5]

This Act not to apply to certain insurers ceasing to enter into new contract before commencement of the Act

2E The provisions of this Act shall not apply to an insurer as defined in paragraph (*i*) or (*ii*) of sub-clause (*a*) of clause (9) of section 2 in relation to any class of his insurance business where such insurer has ceased, before the commencement of this Act, to enter into any new contracts of that class of business

SYNOPSIS

1 *Legislative changes*
2 *Object*
3 *Scope*

1 *Vanguard Fire and General Insurance Co Ltd v Messrs Fraser & Ross* 1960 S C 971
2 *Vanguard Fire and General Insurance Co M/S Fraser* I I R (1959) Mad 681 : 1959 Mad 336
3 *Vanguard Fire and General Insurance Co Ltd v M/S Fraser and Ross* 1960 S C 971
4 *Vanguard Fire and General Insurance Co Ltd v Messrs Fraser and Ross* 1960 S C 971 ; *see* also Notes 2 to 4 above
5 *See* S 43(2) and G S R 734 of August, 1956 *post*

1 Legislative changes —This section was originally inserted as section 2-B by Act XI of 1939 and renumbered as section 2-E by Act XLVII of 1950

2 Object —The object of the section is to offer an inducement to foreign insurers to remain in the country for the purpose of their carrying through the business in respect of contracts they have entered into before the commencement of the Act [1]

3 Scope —This section is to be read as a proviso to section 2 D of the Act While section 2-D speaks of the applicability of all the provisions of the Act to every insurer in respect of his liabilities remaining unsatisfied or unprovided for, this section speaks of the non-applicability of the provisions of the Act to an insurer (*i*) who carries on insurance business in India or (*ii*) who has his or its principal place of business or is domiciled in India, when such insurer has ceased to enter into any new contracts of the class of insurance business that he or it was carrying on before the commencement of the Insurance Act, 1938

Registration

3 (1) No person shall, after the commencement of this Act, begin to carry on any class of insurance business in India and no insurer carrying on any class of insurance business in India shall, after the expiry of three months from the commencement of this Act, continue to carry on any such business, unless he has obtained from the Controller a certificate of registration for the particular class of insurance business

Provided that in case of an insurer who was carrying on any class of insurance business in India at the commencement of this Act, failure to obtain a certificate of registration in accordance with the requirements of this sub-section shall not operate to invalidate any contract of insurance entered into by him if before such date as may be fixed in this behalf by the Central Government by notification in the official Gazette, he has obtained that certificate

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the memorandum and articles of association, where the applicant is a company and incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or, under the Indian Companies Act, 1866, or under any Act repealed thereby, or, in the case of any other insurer specified in sub-clause (*a*) (*ii*) or sub clause (*b*) of clause (9) of section 2 a certified copy of the deed of partnership or of the deed of constitution of the company, as the case may be, or, in the case of an insurer having his principal place of business or domicile outside India, document specified in clause (*c*) of section 63 ,

1 Select Committee Report *see* also Note 1 of S 2D *supra* p 71

(*b*) the name, address and the occupation, if any, of the directors where the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1865, or under any Act repealed thereby, and in the case of an insurer specified in sub-clause (*a*) (*ii*) or clause (9) of section 2 the names and addresses of the proprietors and of the manager in India and in any other case the full address of the principal office of the insurer in India and the names of the directors and the managers at such office and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the insurer ,

(*c*) a statement of the class or classes of insurance business done or to be done, and a statement that the amount required to be deposited by section 7 or section 98 before application for registration is made has been deposited together with a certificate from the Reserve Bank of India showing the amount deposited ,

(*d*) where the provisions of section 6 or section 97 apply, a declaration verified by an affidavit made by the principal officer of the insurer authorised in that behalf that the provisions of those sections as to working capital have been complied with ,

(*e*) in the case of an insurer having his principal place of business or domicile outside India, a statement verified by an affidavit made by the principal officer of the insurer setting forth the requirements (if any) not applicable to nationals of the country in which such insurer is constituted, incorporated or domiciled which are imposed by the laws of practice of that country, upon Indian nationals as a condition of carrying on insurance business in that country ,

(*f*) a certified copy of the published prospectus, if any, and of the standard policy forms of the insurer and statements of the assured rates, advantages, terms and conditions to be offered in connection with insurance policies together with a certificate in connection with life insurance business by an actuary that such rates, advantages, terms and conditions are workable and sound

Provided that in the case of marine, accident and miscellaneous insurance business other than workmen's compensation and motor car insurance the above requirements regarding prospectus, forms and statements shall be complied with only in so far as the prospectus, forms and statements may be available, and

(g) receipt showing payment in the prescribed manner of the prescribed fee which shall not be more than five hundred rupees for each class of business

(3) In the case of any insurer having his principal place of business or domicile outside India, the Controller shall withhold registration or shall cancel a registration already made, if he is satisfied that in the country in which such insurer has his principal place of business or domicile Indian nationals are debarred by the law or practice of the country relating to, or applied to insurance from carrying on the business of insurance, or that any requirement imposed on such insurer under the provisions of section 69 is not satisfied

(4) The Controller shall cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be,—

(a) if the insurer fails to comply with the provisions of section 7 or section 98 as to deposits, or

(b) if the insurer is in liquidation or is adjudged an insolvent, or

(c) if the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer, or

(d) if the whole of the deposit made in respect of a class of insurance business has been returned to the insurer under section 9, or

(e) if, in the case of an insurer specified in sub-clause (c) of clause (9) of section 2, the standing contract referred to in that sub-clause is cancelled or is suspended and continues to be suspended for a period of six months and the Controller may cancel the registration of an insurer, or

(f) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or order made thereunder, or

(*g*) if the Controller has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or

(*h*) if the insurer carries on any business other than insurance business or any prescribed business

(5) When the Controller withholds or cancels any registration under sub-section (3) or clause (*a*), clause (*e*), clause (*f*), clause (*g*), or clause (*h*) of sub-section (4), he shall give notice in writing to the insurer of his decision, and the decision shall take effect on such date as he may specify in that behalf in the notice, such date not being less than one month and not more than two months from the date of the receipt of the notice in the ordinary course of transmission

(5A) When the Controller cancels any registration under clause (*b*), clause (*c*) or clause (*d*) of sub-section (4), the cancellation shall take effect on the date on which notice of the order of cancellation is served on the insurer

(5B) When a registration is cancelled the insurer shall not, after the cancellation has taken effect, enter into any new contracts of insurance but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub-section (5D), continue as if the cancellation had not taken place

(5C) Where a registration is cancelled under clause (*a*), clause (*e*), clause (*f*), clause (*g*) or clause (*h*) of sub-section (4) the Controller may at his discretion revive the registration, if the insurer within six months from the date on which the cancellation took effect makes the deposits required by section 7 or section 98, or has his standing contract restored or has had an application under sub-section (4) of section 3A accepted or satisfies the Controller that no claim upon him such as is referred to in clause (*g*) of sub-section (4) remains unpaid or that he has complied with any requirement of the Act or of any rule or order made thereunder or that he has ceased to carry on any business other than insurance business or any prescribed business as the case may be, and complies with any directions which may be given to him by the Controller

(5D) Where the registration of an insurance company is cancelled under sub-section (4), the Controller may after the expiry of six months from the date on which the cancellation took effect, apply to the Court for an order to wind up the insurance company, or to wind up the affairs of the company in respect of a class of insurance business, unless the registration of the insurance company

has been revived under sub-section (5-C) or an application for winding up the company has been already presented to the Court The Court may proceed as if an application under this sub-section were an application under sub-section (2) of section 53, or sub-section (1) of section 58, as the case may be

(6) Subject to compliance with the provisions of sections 2 C, 6-A, 10 (2-A), 31-A and 32 and of any order made under section 3-B, the Controller shall, on being satisfied that the applicant has fulfilled all the requirements of this section applicable to him, register the insurer and grant him a certificate of registration

(7) The Controller may, on payment of the prescribed fee which shall not exceed twenty-five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary

SYNOPSIS

1 *Legislative changes*
2 *Summary of the section*
3 *Scope and effect, sub-section (1)*
4 *Requisites of a valid application for registration sub-section (2)*
5 *Powers of the Controller under the section*
6 *Grounds of cancellation of registration sub-section (4)*
7 *When the cancellation takes effect sub-sections (5-A) and (5-B)*
8 *Effect of cancellation, sub-section (5-B)*
9 *Revival of registration, sub-section (5-C)*
10 *Application to the Court for winding up order sub-section (5-D)*
11 *When a certificate of registration to be given sub-section (6)*
12 *Duplicate certificate, sub-section (7)*
13 *Appeal*

1 **Legislative changes** —(*a*) The word 'person in sub-section (1) has been substituted for the word 'insurer' by Act XX of 1940

(*b*) The word "India" occurring in the different sub sections and clau of the section has been substituted for the words "the States" by Act LXII 1956

(*c*) The word 'Controller" in sub-section (1) has been substituted by Act XLVII of 1950 and the expression "for the particular class of insuran business' has also been inserted by the said Act of 1950

(*d*) Proviso to sub-section (1) has been added with retrospective effect by Act XX of 1940

(*e*) The words "such date as may be fixed in this behalf by the Central Government by notification in the official Gazette" in proviso to sub-section (1) have been substituted for the words 'the expiry of one month from th commencement of the Insurance (Amendment) Act, 1940" by Act XIII of 1941

(*f*) The words ' or under the Indian Compames Act, 1882, or under the Indian Companies Act, 1865 or under any Act repealed thereby' in clause (*l*) of sub-section (2) have been inserted by Act XLI of 1939

(*g*) The word 'India' in clause (*e*) of sub-section (2) has been substituted for the words "British India" by Act XX of 1940

(*h*) The words "receipt showing payment in the prescribed manner of the prescribed fee which shall not be" in clause (9) of sub section (1) have been substituted by Act VI of 1946 and the word 'fine' in the said clause has been substituted for the word 'one' by Act XIII of 1941

(*i*) The word "Controller" in sub-section (4) has been substituted by Act XLVII of 1950, and the sub-section (4) has been substituted with retrospective effect by Act XX of 1940

(*j*) The word 'or' in clause (*d*) and clause (*e*) and the words following clause (*e*) were added by Act XII of 1941

(*k*) Clause (*h*) of sub-section (4) was substituted by Act VI of 1946

(*l*) Sub sections 5-A to 5-D were inserted with retrospective effect by Act XX of 1940 and the words "this section" in sub-section (6) were substituted by words 'the Act' by the said Act of 1940 So also the words "register the insurer and grant him" in sub-section (6) have been substituted for the words "grant the insurer ' by the same Act

(*m*) Sub-section (7) has been inserted by Act XIII of 1941

2 **Summary of the section** —Sub-section (1) of section 3 provides for registration of any person carrying on the business of insurance and no such business can be carried on unless a certificate of registration for the particular class of insurance business has been obtained from the Controller Sub-section (2) provides for the accompanying requisites of an application for registration and its contents Sub-section (3) gives power to the Controller to withold or cancel the registration of a foreign insurer under circumstances mentioned in the said sub-section Sub-section (4) also confers powers on the Controller to cancel the certificate for reasons specified therein Sub section (5) enjoins certain duties of the Controller in the event of withholding and cancelling registration Sub-section (5-A) speaks of the date from which the cancellation is to take effect Sub section (5 B) lays down that when a registration is cancelled the insurer shall not after the cancellation has taken effect enter into new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by him before such cancellation takes effect shall, subject to the provisions of sub section (5 D), continue as if the cancellation had not taken place Sub section (5-C) gives discretion to the Controller to revive the registration within six months from the date of cancellation taking effect on the insurer's fulfilling certain conditions mentioned therein Sub-section (5 D) empowers the Controller to apply to the court for winding up of the insurance company after the expiry of six months from the date of cancellation of registration taking effect Sub section (6) enjoins when the Controller should grant the insurer a certificate of registration and sub-section (7) prescribes the procedure for issuing a duplicate certificate by the Controller

3 **Scope** —This section is a general section which applies to all insurers It requires registration in every case and prohibits an insurer who has failed to obtain a certificate of registration on or before 1st July, 1939, from carrying on its business This rule has no exception and section 52 of the Act has not made an exception to this section What section 52 lays down is that first of all no new insurance business shall be started on the dividing

after the commencement of the Act, that is to say, after 1st July, 1939 As regards those already in existence on that date, it permits them to carry on their business for a further period of three years but no more It do s not exempt them from the necessity of registration Thus, where an insurance company (Clerks Mutual Benefit Fund) governed by the Insurance Act, 1938, did not obtain the necessary certificate of registration as required by sub-section (1) of this section and was obliged to stop its business from 1st October, 1939, but the members went on to make contributions On the liquidation of the company the liquidator could not claim these contributions but these moneys would have to be dealt with separately 1 The scope of sub-section (1) is restricted to two classes of insurers, *viz*, one who is to commence the business and the other who has already been carrying on the business In the cas of former he cannot commence his business without first obtaining the certificate of registration and in the case of the latter he cannot continue to carry on the business if he fails to obtain the said certificate within three months from the date of the commencement of the Act, *i e*, 1st July, 1939 But the proviso to the said sub-section extends the scope to an insurer carrying on the insurance business and who has failed to obtain the required certificate within th aforesaid time in not treating the contracts of insurance entered into by him after that date as invalid up to such date as the Central Government may fix by notification in the official Gazette Such date had been fixed as 1st August 1942, for all insurers in the States excepting those in Mysore and Baroda

4 Requisites of a valid application for registration *Sub-section* (2) —The requisites of a valid application for registration are—

(*1*) in case of a company incorporated under the Companies Act—

(*a*) a certified copy of the memorandum and articles of association,

(*b*) the name, address and the occupation of the directors,

(*c*) a statement showing the class or classes of insurance business done or to be done ,

(*d*) a certificate from the Reserve Bank of India showing the amount required to be deposited by section 7 or section 98 has been so deposited

(*e*) an affidavit affirming that the provisions of the Act as to working capital have been complied with (this is required where th incorporation is made after or an insurer commencing the business of life insurance either solely or in conjunction with any oth r business, after the 26th day of January, 1937)

(*f*) a certified copy of the published prospectus and standard polic forms ,

(*g*) statements of the assured rates advantages, terms and conditions,

(*h*) a certificate by an actuary (in case of life insurance business only that the rates advantages, terms and conditions are workable and sound and

(*i*) receipt showing payment of the prescribed fee in the prescribed manner

(*ii*) in case of an insurer having his or its principal place of business or is domiciled in India—

1 C R Das v F Karim I L R (1946) Nag 226 1946 Nag L J 473 : 223 I C 52 : 1946 N

(*a*) a certified copy of the deed of constitution of the company or a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instruments constituting or defining the constitution of the insurer and when such instrument is not written in English language, a certified translation thereof,

(*b*) the names and addresses of the proprietors and of the manager in India or the full address of the principal office of the insurer in India and the names of the directors and managers at such office and the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the insurer,

(*c*) an affidavit affirmed by the principal officer about the requirements (if any) not applicable to nationals of the insurer's country of origin upon Indian nationals as a condition of carrying on insurance business in that country

All other requirements mentioned in (1) above except those mentioned herein have also to be complied with

5 **Powers of the Controller under the section** —Powers have been conferred on the Controller under this section—

(*a*) to withhold registration or cancel a registration already made, in respect of an insurer having his principal place of business or domicile outside India when he fails to comply with the special or reciprocal requirements imposed by the Central Government,

(*b*) to cancel the registration of an insurer either wholly or in part in respect of a particular class of insurance business on the happening of the events or non-fulfilment of conditions, as the case may be, and referred to in clauses (*a*) to (*h*) of sub section (4) of the section,

(*c*) to revive at his discretion the registration within six months from the date of order of cancellation in terms of sub section (5C) of the section,

(*d*) to apply to the court for an order to wind up the insurance company after the expiry of six months of the date of order of cancellation of registration if no such application for winding up has been already presented to the court,

(*e*) to register and grant the insurer a certificate of registration on being satisfied that all the requirements of this section have been duly complied with, and

(*f*) to issue at his discretion a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated or in any other case where he thinks the issue of a duplicate certificate is necessary

6 **Grounds of cancellation of registration Sub section (4)** —The grounds upon which a certificate of registration can be cancelled are as follows

(*a*) when the insurer fails to deposit and keep deposited with the Reserve Bank of India the amount either in cash or in securities as specified in section 7 of the Act or in case of

Insurance Company and Co-operative Life Insurance Society to so deposit or keep deposited with the said bank the amount in terms of section 98 of the Act, or

(*b*) when the insurer is in liquidation or is adjudged an insolvent, or

(*c*) where there is a transfer or amalgamation of his business or any class of business to or with any other insurer, or

(*d*) where the whole of the deposit made is returned to the insurer by an order of the court in terms of section 9 of the Act, or

(*e*) in case of an insurer who has, in India, a standing contract with underwriters who are members of the Society of Lloyd's where such standing contract is cancelled or suspended and continues to be so suspended for a period of six months, its registration may be cancelled on any of the following grounds

(i) where he makes default to comply with, or acts in contravention of, any requirement of the Insurance Act, 1938, or any rule or order made thereunder, or

(ii) where any claim under any policy of insurance remains unpaid for a period of three months after final judgment of the court, or

(iii) where he carries on any business other than insurance business or any prescribed business

(The cancellation of registration may be either total or partial Cancellation will be total when it relates to all classes of insurance business and partial when it relates to a particular class of insurance business)

(*f*) in case of an insurer having his principal place of business or domicile outside India, its registration may be withheld or cancelled on any of the grounds as follows

(i) where in the insurer's country of origin Indian nationals are debarred from carrying on the business of insurance by any law or practice of that country relating to, or applied to insurance or

(ii) where the requirement imposed on him under section 6? of the Act is not satisfied

7 **When the cancellation takes effect Sub-sections (5) and (5A)** — The cancellation takes effect on the date on which notice of the order of cancellation is served on the insurer when such cancellation is made on the grounds of (*a*) the insurer being in liquidation or adjudged an insolvent or (*b*) transfer or amalgamation of his business with any other, or (*c*) the deposit having been returned to him under section 9 of the Act But cancellation in cases of (i) any insurer having his principal place of business or domicile outside India and (ii) an insurer who has in India a standing contract with underwriters who are members of the Society of Lloyd's, shall take effect from the date specified in the decision of which notice in writing should be given to them The date specified must not be less than one month nor more than two months from the date of receipt of the notice in the ordinary course of transmission

8 **Effect of cancellation Sub-section (5B)** —On a registration being cancelled the insurer is debarred from entering into any new contracts of insurance from the date on which such cancellation takes effect, but with regard to contracts of insurance already entered before taking effect of the order of cancellation all rights and liabilities in respect thereof shall continue as if there was no cancellation having taken effect in respect of them, subject, of course, such rights and liabilities being affected by an order of winding up if made by the court upon an application made by the Controller in that behalf in terms of sub-section (5D) of the Act

9 **Revival of registration Sub-section (5C)** —The power to revive registration has been conferred on the Controller by sub-section (5C) of this section But this power is discretionary and like all discretionary powers it has to be exercised judicially and not arbitrarily This power of revival has not been given in all cases of cancellation but in respect of those cancellation orders where they are made due to (*i*) insurer's failing to make the deposits as required under section 7 or section 98 of the Act and where they are made against an insurer who has, in India, a standing contract with underwriters who are the members of the Society of Lloyd's when such standing contract is either cancelled or suspended for a period of six months, and on grounds of his making default to comply with or contravening any requirement of the Insurance Act, 1938, or any rule or order made thereunder, or (*ii*) his failing to meet the claim due under any policy of insurance within three months from any final judgment of the court, or (*iii*) his carrying on any business other than insurance business or any prescribed business Cancellation made on the grounds of (*a*) liquidation or insolvency, or (*b*) transfer or amalgamation of the business with another, or (*c*) return of the whole of the deposit, cannot be set aside to revive registration under this sub-section

Revival of registration can only be made within six months from the date on which the cancellation took effect and the Controller may revive the registration, if within that period, the insurer makes the required deposits under section 7 or section 98 when cancellation is made on account of his failure to so deposit, and in the case of an insurer having in India a standing contract with underwriters who are members of the Society of Lloyd's when his standing contract is restored or his application for renewal of registration is accepted under sub-section (4) of section 3A or if he satisfies the Controller that no claim upon it under any policy of insurance is remaining unpaid or he has complied with the requirements of the Insurance Act or any rule or order made thereunder or he has ceased to carry on any business other than insurance business or any prescribed business and he complies with any directions which were given to him by the Controller

The period of six months is to be calculated from the date on which notice of the order of cancellation is served on the insurer in case of cancellation under clause (*b*) (*c*) or (*d*) of sub-section (4) of this section and in cases of cancellation under sub-section (3) or under clause (*a*) (*e*), (*f*) (*g*) or (*h*) of sub-section (4) such period is to be reckoned from the date of the receipt of the notice in the ordinary course of transmission but the period of one month or two months as the case may be, specified in the notice should be excluded

10 **Application to the court for winding up order Sub-section (5D)** —The Controller has been given the discretion by sub-section (5D) of this section to apply to the court for an order to wind up the insurance company or to wind up the affairs of the company in respect of a class of insurance business under the following circumstances

(i) such application can be presented afterthe expiry of six months from the date on which the cancellation of registration of insurance company took effect, and where

(ii) the registration of that insurance company has not been revived under sub-section (5C), or

(iii) no application for its winding up has already been presented to the court

The court has also been given the discretion to treat such under sub-section (5D) as an application under sub-section (2) of section 58, or sub-section (1) of section 58, as the case may be, and may proceed with the application accordingly The court in this sub-section means the 'court' as defined in clause (b) of section 2 of the Act, that is, it means the principal civil court of original jurisdiction in a district and the High Court in exercise of its ordinary original civil jurisdiction

11 When a certificate of registration to be given Sub section (6) —Sub-section (6) of this section is mandatory and the Controller has no option but to grant an insurer a certificate of registration when the latter complies with the provisions of sections 2C, 6A 10 (2A), 31A and 32 and with any order made under section 3B of the Act

12 Duplicate certificate Sub-section (7) —Sub-section (7) confers discretion on the Controller to issue a duplicate certificate of registration a prescribed fee not exceeding twenty-five rupees is paid and when the original certificate is lost, destroyed or mutilated to replace same and in any other case when he is of opinion that the issue of a duplicate certificate is necessary

13 Appeal —The order under this section refusing to register, cancelling the registration of, an insurer is appealable under clause (a) of sub-section (1) of section 110 of the Act and such appeal shall lie to the court having jurisdiction over the matter

14 Applicability —This section shall apply to Life Insurance Corporation of India [1]

3A (1) An insurer who has been granted a certificate of registration under section 3 shall have the registration renewed annually for each year after that ending on the 31st day of December, 1941

Renewal of registration

(2) An application for the renewal of a registration for any year shall be made by the insurer to the Controller before the 31st day of December of the preceding year, and shall be accompanied as provided in sub-section (3) by evidence of payment of the prescribed fee which shall not exceed one thousand rupees for each class of insurance business, but may vary according to the volume of business done by the insurer in India in each class of insurance business to which the registration relates

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or, where there is no office of that Bank, into the Imperial Bank of India acting as the agent of that Bank, or into any Government treasury

1 *See* S 43 (1) of the L. I C. Act *post*

and the receipt shall be sent along with the application for renewal of the registration

(4) If the insurer fails to apply for renewal of registration before the date specified in sub-section (2), the Controller may, so long as an application to the court under sub section (5D) of section 3 has not been made, accept an application for renewal of the registration on receipt from the insurer of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by him, as the Controller may require

Provided that an appeal shall lie to the Central Government from an order passed by the Controller imposing a penalty on the insurer

(5) The Controller shall, on fulfilment by the insurer of the requirements of this section, renew the registration and grant him a certificate of renewal of registration

SYNOPSIS

1 *Legislative changes*
2 *Scope and object*
3 *Application for renewal beyond the prescribed date*
4 *Appeal, Proviso to sub-section (4)*
5 *Failure to renew registration, effect of*

1 Legislative changes —(*a*) This section has been inserted by Act XIII of 1941

(*b*) The word 'Controller' occurring in the section has been substituted by Act XLVII of 1950

(*c*) The words 'Imperial Bank of India' occurring in sub section (3) of this section should have been substituted by the words 'State Bank of India by appropriate amendment

2 Scope and object —This section imposes a duty on every insurer who has obtained a certificate of registration to renew such certificate every year on payment of the prescribed fee It also casts a duty on the Controller to grant such insurer such renewal of registration certificate when he fulfils the requirements of the section, that is to say, when he makes an application for same before 31st day of December of the preceding year and pays into the Reserve Bank of India or the State Bank of India or the Government Treasury, as the case may be, the prescribed fee and produces receipt of such payment along with the said application But the section does not specifically say as to what will become of the insurer if he fails to take out a renewal certificate as section 3 of the Act does not speak about the cancellation of registration on insurer's failure to have his certificate renewed as provided in this section From the mandatory provision of the section it seems that the certificate of registration would automatically lapse on the insurer's failure to renew the certificate

The object of the section seems to be twofold Firstly through such renewal of registration the Controller is kept informed of every insurer carrying on the insurance business and of any insurer who has discontinued his business Secondly, the renewal fees indicate a source of revenue to the Government.

3 **Application for renewal beyond the prescribed date** Sub-section (4) —Sub section (4) of this section confers discretion on the Controller to accept an application for renewal of the registration beyond the prescribed date, *i e*, beyond 31st day of December of the preceding year, on receiving payment of the prescribed fee and penalty as may be imposed by him The power of the Controller in this regard has been restricted in two respects, that is to say, (*i*) he cannot accept an application for renewal after he presents an application to the court for an order to wind up the insurance company under the provisions of sub-section (5D) of section 3 of the Act, and (*ii*) he cannot impose greater penalty than the prescribed fee for renewal as provided by sub-section (2) of this section

4 **Appeal, proviso to sub-section (4)** —Proviso to sub-section (4) has conferred a right of appeal on the insurer from an order of the Controller imposing a penalty on him under sub section (4) Such appeal shall lie to the Central Government But no general right of appeal is given to the insurer to prefer an appeal against an order of the Controller when he refuses to renew the registration under this section

5 **Failure to renew registration, effect of** —Section 3A of the Act is mandatory but no specific provision has been made in the section providing as to what would happen if the insurer does not specifically say that the certificate of registration Section 3 of the Act does not specifically say that the certificate of registration granted by the Controller under that section should remain in force for a period of one year from the date of its issue nor does the section confer power upon the Controller to cancel the registration on the insurer's failure to renew the registration It is true that clause (*f*) of sub-section (4) gives discretion to the Controller to cancel the registration of an insurer if he makes default in complying with or act in contravention of any requirement of the Insurance Act or any rule or order made thereunder It is also true that to have the certificate of renewal of registration under section 3A is a requirement of the Act and the insurer's failure in this regard would bring him within the mischief of clause (*f*) But confusion arises as clauses (*f*) to (*h*) having followed clause (*e*) because it may mean that the clauses refer to the insurer mentioned in clause (*e*) of section 3 Moreover, the words 'and the Controller may cancel the registration of an insurer' should not have occurred in clause (*e*) but should have occurred independently of that clause

3B If, when considering an application for registration under section 3 or at any other time, it appears to the Controller that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Controller and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound

Certification of soundness of terms of life insurance business

SYNOPSIS

1 *Legislative changes*
2 *Scope and applicability*
3 *Controller's power and its exercise*
4 *Actuary*

1 Legislative changes—Section 3B has been inserted by Act VI of 1946 and the word 'Controller' occurring in the section has been replaced by the words 'Superintendent of Insurance' by Act XLVII of 1950

2 Scope and applicability—The scope of this section extends in empowering the Controller to do certain things specified in the section to enable him to certify that the assured rates, advantages, terms and conditions offered or to be offered in respect of life insurance business are workable and sound It enures to the benefit of both the insurer and the insured The powers conferred on the Controller under this section are necessary specially when he has to consider the said rates, advantages, terms and conditions as furnished to him under clause (*f*) of sub-section (2) of section 3 in deciding as to whether certificate of registration is to be granted to an insurer carrying on the life insurance business

The provisions of the section are applicable to life insurance business only, that is, they are applicable to insurer who carries on a life insurance business and not to one who carries on any insurance business other than life insurance business

3. Controller's power and its exercise—This section confers power on the Controller to supersede a certificate of an actuary certifying that the assured rates, advantages terms and conditions offered or to be offered in connection with life insurance policies are workable and sound In exercising such power, the Controller has the discretion to require the insurer to lay before another actuary to be appointed by such insurer and approved by him a statement of the said rates advantages etc , for consideration and report by the said actuary so appointed On receipt of the latter's report, the Controller has also the discretion to require the insurer, by an order in writing, to make modifications in the said rates, terms, advantages or conditions, as the case may be, within the time specified in the said order When the necessary modifications of the said rates, terms, advantages or conditions as required to be made have been made by the insurer, the Controller will then certify that the said rates, advantages, terms or conditions are workable and sound

The Controller has to exercise his power under this section either when he considers an application for registration under section 3 or at any other time, but before he decides to exercise this power he must be satisfied that the assured rates advantages, terms and conditions are in some respect not workable or sound Unless he is so satisfied he cannot exercise the power conferred upon him by this section A mere suspicion or guess on his part will not suffice to usurp the power under this section

4 Actuary—The actuary mentioned in this section refers to an actuary defined in clause (1) of section 2 of the Act[1]

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[1] *See* Note 2 under S 2, pp 13 14 *supra*

3 **Application for renewal beyond the prescribed date Sub-section (4)** —Sub-section (4) of this section confers discretion on the Controller to accept an application for renewal of the registration beyond the prescribed date, *i e*, beyond 31st day of December of the preceding year, on receiving payment of the prescribed fee and penalty as may be imposed by him The power of the Controller in this regard has been restricted in two respects, that is to say, (*i*) he cannot accept an application for renewal after he presents an application to the court for an order to wind up the insurance company under the provisions of sub-section (5D) of section 3 of the Act, and (*ii*) he cannot impose greater penalty than the prescribed fee for renewal as provided by sub-section (2) of this section

4 **Appeal, proviso to sub-section (4)** —Proviso to sub-section (4) has conferred a right of appeal on the insurer from an order of the Controller imposing a penalty on him under sub section (4) Such appeal shall lie to the Central Government But no general right of appeal is given to the insurer to prefer an appeal against an order of the Controller when he refuses to renew the registration under this section

5 **Failure to renew registration, effect of** —Section 3A of the Act is mandatory but no specific provision has been made in the section providing as to what would happen if the insurer does not or fails to renew the registration Section 3 of the Act does not specifically say that the certificate of registration granted by the Controller under that section should remain in force for a period of one year from the date of its issue nor does the section confer power upon the Controller to cancel the registration on the insurer's failure to renew the registration It is true that clause (*f*) of sub-section (4) gives discretion to the Controller to cancel the registration of an insurer if he makes default in complying with or act in contravention of any requirement of the Insurance Act or any rule or order made thereunder It is also true that to have the certificate of renewal of registration under section 3A is a requirement of the Act and the insurer's failure in this regard would bring him within the mischief of clause (*f*) But confusion arises as clauses (*f*) to (*h*) having followed clause (*e*) because it may mean that those clauses refer to the insurer mentioned in clause (*e*) of section 3 Moreover, the words "and the Controller may cancel the registration of an insurer" should not have occurred in clause (*e*) but should have occurred independently of that clause

Certification of soundness of terms of life insurance business

3B If, when considering an application for registration under section 3 or at any other time, it appears to the Controller that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance business are in any respect not workable or sound, he may require that a statement thereof shall be submitted to an actuary appointed by the insurer for the purpose and approved by the Controller and may by order in writing further require the insurer to make within such time as may be specified in the order such modifications in the said rates, advantages, terms or conditions, as the case may be, as the said actuary may report to be necessary to enable him to certify that the said rates, advantages, terms and conditions are workable and sound

SYNOPSIS

1 *Legislative changes*
2 *Scope and applicability*
3 *Controller's power and its exercise*
4 *Actuary*

1 **Legislative changes**—Section 3B has been inserted by Act VI of 1946 and the word Controller occurring in the section has been replaced by the words 'Superintendent of Insurance' by Act XLVII of 1950

2 **Scope and applicability**—The scope of this section extends in empowering the Controller to do certain things specified in the section to enable him to certify that the assured rates, advantages, terms and conditions offered or to be offered in respect of life insurance business are workable and sound It enures to the benefit of both the insurer and the insured The powers conferred on the Controller under this section are necessary specially when he has to consider the said rates, advantages, terms and conditions as furnished to him under clause (*f*) of sub-section (2) of section 3 in deciding as to whether certificate of registration is to be granted to an insurer carrying on the life insurance business

The provisions of the section are applicable to life insurance business only, that is, they are applicable to insurer who carries on a life insurance business and not to one who carries on any insurance business other than life insurance business

3. **Controller's power and its exercise**—This section confers power on the Controller to supersede a certificate of an actuary certifying that the assured rates, advantages, terms and conditions offered or to be offered in connection with life insurance policies are workable and sound In exercising such power, the Controller has the discretion to require the insurer to lay before another actuary to be appointed by such insurer and approved by him a statement of the said rates advantages etc, for consideration and report by the said actuary so appointed On receipt of the latter's report, the Controller has also the discretion to require the insurer, by an order in writing, to make modifications in the said rates, terms, advantages or conditions, as the case may be, within the time specified in the said order When the necessary modifications of the said rates, terms, advantages or conditions as required to be made have been made by the insurer, the Controller will then certify that the said rates, advantages, terms or conditions are workable and sound

The Controller has to exercise his power under this section either when he considers an application for registration under section 3 or at any other time, but before he decides to exercise this power he must be satisfied that the assured rates, advantages, terms and conditions are in some respect not workable or sound Unless he is so satisfied he cannot exercise the power conferred upon him by this section A mere suspicion or guess on his part will not suffice to usurp the power under this section

4 **Actuary**—The actuary mentioned in this section refers to an actuary defined in clause (1) of section 2 of the Act [1]

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1 *See* Note 2 under S 2; pp 13 14 *supra*

Minimum limits for annuities and other benefits secured by policies of life insurance

4 (1) No insurer, not being a Co operative Life Insurance Society to which Part IV of this Act applies shall pay or undertake to pay on any policy of life insurance issued after the commencement of the Insurance (Amendment) Act, 1946, an annuity of less than one hundred rupees or less or a gross sum of less than one thousand rupees or less exclusive of any profits or bonus, provided that this shall not prevent an insurer from converting any policy into a paid-up policy of any value or payment on surrender value of any amount

(2) Nothing contained in this section shall apply to any policy of the description known as a group policy, where the number of persons covered by the policy is not less than fifty or such smaller number as may be approved by the Controller and a standard form of the policy has been certified in writing by the Controller to be a policy of such description or to any policy undertaking to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupees issued—

(*a*) by an insurer to any person in his permanent employ in respect of the life of that person, or

(*b*) under any scheme, approved by the Controller and complying with such conditions, if any, as he may think fit to impose, whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer,

or to any policy issued by a Mutual Insurance Company to which Part IV applies and which the Controller may by order in writing exempt from the provisions of this section, for so long as the company complies with such conditions, if any, as may be prescribed

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *"Profits or bonus"*
5 *"Paid-up policy"*
6 *"Surrender value"*
7 *Group policy" or Group insurance*
8 *Mutual Insurance Company*

1 Legislative changes—The words "no insurer shall pay" occurring in sub-section (1) were substituted by Act XLVII of 1950. The words this Act in the said sub-section were substituted by Act X of 1948 and the words commencement Act 1946' and 'less than thousand rupees" were inserted by Act VI of 1946 Sub-section (2) of the section was substituted by Act XIII of 1941

2 Object and scope—The object of the section is twofold Firstly, it provides for minimum limits for annuities and other benefits secured by policies of life insurance In providing such limits secondly, it purports to separate ordinary life insurance companies from Provident Societies in their

respective field of life insurance business thus preventing one from encroaching upon another's domain The main object in enacting this section is to protect co-operative societies doing small life insurance business from their business being jeopardised in competition with life insurance companies doing big business in the same field

The scope of this section is limited in fixing the minimum limit to pay or undertake to pay on a policy of life insurance to an insurer who is engaged in life insurance business Annuity payable within this limit must not exceed one hundred rupees or more or a gross sum of one thousand rupees or more But such limit is exclusive of any profits or bonus that may be payable under the contract of insurance Again, ordinary life insurance companies have not been prohibited to issue a paid-up policy of a sum less than the said limit fixed or to pay or undertake to pay surrender value of any amount in case of surrender of the policy [1]

3 **Applicability** —The provisions of this section are applicable to every insurer doing life insurance business except—

(*i*) Co-operative Life Insurance Society to which Part IV of the Insurance Act, 1938, applies ,

(*ii*) Mutual Insurance Company to which Part IV of the said Act also applies and the Controller has exempted, by an order in writing, from the provisions of this section being applicable to it so long as the company complies with the prescribed conditions ,

(*iii*) insurer issuing group policy, where the number of persons covered by the policy is not less than fifty or a smaller number approved by the Controller and a standard form of policy certified by the Controller answering the description of a group policy ,

(*iv*) insurer issuing a policy undertaking therein to pay a gross sum of more than five hundred rupees or an annuity of more than fifty rupees—

(*a*) to any person in his permanent employ in respect of the life of that person, or

(*b*) under any scheme approved by the Controller and complying with conditions imposed whereby premiums due from persons employed under any employer are collected by or under the supervision of the employer

4 **"Profits or bonus"** —The amount payable under the policy is not necessarily limited to the sum assured Many policies provide for increasing the sum insured by the addition of bonuses, which are to accrue after the policy has been in force for a specified period, or by giving the assured a share in the profits of the insurer's business [2] Where the policy is assigned it is subject to the rights of the assignor and hence bonuses or additions to the policy moneys pass to the assignee [3]

1 *See* Note under S 66 *infra*

2 Halsbury's Laws of England Vol 22 p 285 and *see* also *Prudential Insurance Co* v *Inland Revenue Commissioners* (1904) 2 K B 658 at p 665 *Boerlan* v *Dickson* (1909) 25 T L R 585 where it has been observed that the distribution of profit is usually in the discretion of the insurers *see* also *British Equitable Assurance Co* v *Baily* (1906) A C 35 H L

3 *Courtney* v *Ferrers* (1827) 1 Sim 137 *Parkes* v *Bott* (1838) 9 Sim 388 *Roberts* v *Edwards* (1863) 33 Beav 259

Policies which participate in the profits or bonus are generally known as participating policies or policies with profits The profits or bonus arise out of the surpluses disclosed as a result of investigation made by actuaries into the financial condition of the insurer's business Certain percentage of such surpluses is allocated to or reserved for policy-holders and is distributed by way of bonus among the holders of participating policies in force for the full sum assured on the date as at which the valuation is made The bonus is declared as a reversionary addition to the sum assured vesting on declaration and payable with it when the policy becomes a claim but the policy holder has the option of discounting his share of the profits for an immediate cash payment of a smaller amount or of applying such discounted value as an equivalent reduction of premiums

5 **"Paid-up policy"** [1]—A paid-up policy means a reduced paid up assurance which constitutes a valuable privilege to the policy-holder which secures automatically to him and his dependants in the event of cessation of payment of the premiums under his original policy But a paid-up policy is issued subject to certain conditions, namely, that premiums have been paid under the policy for not less than two years and that such paid up assurance, inclusive of any attached bonus, in the case of a policy for a sum assured of Rs 1,000 or over is not less than Rs 100 and in the case of a policy for a sum assured of less than Rs 1,000 is not less than Rs 50 In case of participating policies, all bonuses declared and still attaching to them at the date of cessation of payment of the premiums remain attached to the paid up policy but the policy is not entitled to participate in the profits declared thereafter A paid-up policy is really a fully paid policy for a reduced amount proportionate to the number of premiums actually paid [2]

6 **'Surrender value'** —The value of a current policy depends upon the life insured's expectation of life, and the value, though nominal only at the commencement of the risk, usually increases according to the length of the period during which the policy has remained in force If, therefore, the policy is allowed to lapse, its value will be lost to the assured To obviate this provision is made by which the assured becomes entitled on notice to surrender the policy and to be paid its surrender value [3] Once the notice has become effective, the surrender value only will be payable, even though the assured dies before the actual surrender of the policy or the payment of the surrender value [4]

Under the policies issued by the Life Insurance Corporation of India a liberal surrender value is allowed after premiums have been paid for at least two years or to the extent of one tenth of the number stipulated for in the policy, provided such one tenth exceeds one full year's premium But no surrender value is allowed in case of policies effected under the Two-Year Temporary Assurance Policy and the immediate Annuity

7 **Group insurance or 'Group policy'** —Generally a group insurance is the coverage of a number of individuals by means of a single or blanket insurance policy The principal difference between wholesale insurance and group insurance is that the latter type requires fifty or more employees who

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1 *See* p 63 *infra*

2 See *Re Policy of the Equitable Life Assurance Society of the United States and Mitchell* (1911) 27 T L R 213 *Re Fleetwood's Policy* (1936) Ch 48

3 Halsbury's Laws of England Vol 22 p 285, *see* also *Equitable Life Assurance Society of the United States* v *Reed* (1914) A C 587 P C

4 *Ingram-Johnson* v *Century Insurance Co* (1909) 5 C 1032

are not required to make individual applications and receive certificates referring to the master policy which is issued to the employer [1] Group insurance, in its nature, is similar to, if not identical with, that form of insurance known as term insurance Hence a group life insurance policy is for a distinct form of insurance differing in many, if not most, of its aspects from ordinary life insurance [2]

8 **"Mutual Insurance Company"**—"Mutual Insurance Company" means an insurer, being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act 1866, or under any Act repealed thereby, which has no share capital and of which by its constitution only and all policy-holders are members [3]

Pure mutual associations in English law are of three kinds, *viz*, (*a*) those which are not themselves insurers but whose members are insurer and assured inasmuch as everyone of them is liable to contribute proportionately, according to the amount of his own insurance, to the losses of other members, (*b*) those which are themselves the insurers, but of which the profits belong entirely to the policy-holders who are the members and (*c*) those which are themselves the insurers, but of which the profits belong entirely to certain classes of policy-holders only, who are the members [4]

Restriction on name of insurer

5 (1) An insurer shall not be registered by a name identical with that by which an insurer in existence is already registered, or so nearly resembling that name as to be calculated to deceive except when the insurer in existence is in the course of being dissolved and signifies his consent to the Controller

(2) If an insurer, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer already in existence whether previously registered or not is carrying on business or so nearly resembling it as to be calculated to deceive, the first-mentioned insurer shall, if called upon to do so by the Controller on the application of the second-mentioned insurer, change his name within a time to be fixed by the Controller

Provided that nothing in this section shall apply to an insurer carrying on business before the 27th day of January, 1937, under the Indian Life Assurance Companies Act, 1912

Provided further that in the application of this section to any insurer who begins to carry on insurance business after the commencement of the Insurance (Amendment) Act, 1946, the

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1 *Prudential Insurance Co of America* v *Jenkins* 162 S W 2d 791

2 *Watkins* v *Metropolitan Life Insurance Co* 174 So 885 *see* also *Protective Life Insurance Co* v *Moore* 153 So 751

3 *See* section 95 (1) (*a*) *post*

4 See *Hutchinson* v *Wright* (1858) 25 Beav 444 *Lion Mutual Marine* v *Tucker* (1883) 12 Q B D 176 *Thomas* v *Evans* (1927) 1 K. B 33 *Jones* v *South West Lancashire Coal Owners* (1927) A C 827 *New York Life* v *Styles*, (1889) 14 App Cas 381 *Municipal Mutual* v *Hills*, (1932) 48 T L R 301

reference to an insurer in existence in sub-section (1) and this sub-section shall be construed as including references to a provident society (as defined in Part III) in existence, whether or not the society is in the course of being dissolved

(3) No insurer other than a provident society (as defined in Part III), who begins to carry on insurance business after the commencement of this Act, shall adopt as its name and no such insurer carrying on business before the commencement of this Act shall continue after the expiry of six months from the commencement thereof to use as its name any combination of words which includes the word "provident"

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Provident society*
5 *Appeal*

1 **Legislative changes**—The word "Controller" occurring in the section was substituted by Act XLVII of 1950 Second proviso to sub-section (2) was inserted by Act VI of 1946 and the words "as defined in Part III" occurring in the second proviso to sub-section (2) and in sub-section (3) have been substituted for the words "to which Part III applies" by Act XIII of 1941

2 **Object and scope**—The main object in enacting the section is to prevent colourable imitation of Trade and Commercial names so that when two insurance companies carrying on insurance business and having their names identical or so nearly resembling each other may not, or calculate to deceive the general public and create confusion in their mind Sub-section (1) of this section has been enacted similar in language to sub-section (1) of section 11 of the Indian Companies Act, 1913, which runs as follows "A company shall not be registered by a name identical with that by which a company in existence is already registered or so nearly resembling that name as to be calculated to deceive except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar requires' Section 20 of the Companies Act 1956, provides that companies must not be registered by a name which in the opinion of the Central Government, is undesirable and a name which is identical with, or too nearly resembles the name by which a company in existence has been previously registered is deemed to be undesirable by the Central Government Section 17 of the English Companies Act, 1948, also provides that a company shall not be registered by a name which in the opinion of the Board of Trade is undesirable

Sub-section (3) of this section also restricts the name of an insurer other than a provident society from adopting or using its name by any combination of words which would include the word 'provident' The object herein is to keep provident societies separated from the ordinary insurers so that the latter may not by using the word provident, be misunderstood to be a provident society

Provisions of this section empower the Controller (i) to refuse to register the insurer not conforming to the provisions therein as to its name or (ii) to register him when another insurer of the similar name is in the course of

being dissolved and the latter gives its consent to the Controller, and (*iii*) to call upon an insurer who has already been registered by a name identical with another through inadvertence or otherwise, to change his name within a time to be fixed by him

The scope of this section does not extend to affect the jurisdiction of a competent court under the general law to restrain the registration of a company under a name so similar to that of another as to be calculated to deceive, though the former may not have the intention to deceive The jurisdiction of the court in this regard is based on the position as to whether the use of a closely similar name under which another is carrying on his business is calculated to deceive or cause confusion between the two businesses and result in causing injury to the other person by diverting his customers or affecting his credit or goodwill [1] So also an aggrieved person has the right to file a suit for injunction or other appropriate relief where another attempts to get registered or is registered by a name so similar to his as to be likely to deceive or cause confusion His remedy by way of application to the Central Government does not exclude his civil remedy [2] In such a case the Registrar himself has the power to refuse to register the company [3] Thus, even though powers have been conferred on the Controller to call upon an insurer to change his name, an aggrieved person does not lose his right to bring an action in court for injunction and damages when there is a colourable imitation of his name by another [4] But where a company has carried on business under a particular name for a considerable length of time no objection can be raised to change its name [5]

Where a change in the name is made by an order of the Controller, such change will not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name Hence, notwithstanding the change in the name, there is no alteration in the legal status of the company, as its incorporation or constitution is not in any manner affected by the mere change in name It continues to possess the same rights and will be subject to the same obligations as before the change of the name [6] So also a change in the name of the plaintiff company during the pendency of the suit does not affect the rights of the company If therefore the decree is passed in the old name of the company it can be executed by the company in its new name [7] But in the case of a foreign company the court will protect when it has a market in that country to have the benefit of its name annexed by a home company [8]

3 Applicability —The provisions of sub-section (1) regarding the restriction on name and of sub-section (2) excluding the two provisos appended thereto regarding the Controller s power to order a change of name within the time specified by him, apply to all insurers carrying on or about to carry on

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1 *Ewing* v *Buttercup Margarine Co* (1917) 2 Ch 1

2 *British Bata Shoe Co Ltd* v *Czechoslovakia Bata Co Ltd* (1946) 64 Patent Case Report 12 *Sturtevant Engineering Co Ltd* v *Sturtevant Mill Co* (1936) 3 All E R 137

3 *R* v *Registrar of Companies* (1912) 3 K B 23 *see* also *Ouvat Ceylon Estates* v *Ouvat Ceylon Rubber Estates* (1910) 27 Pat Cas Rep 753

4 See *Oriental Government Security Life Assurance Co Ltd* v *Oriental Assurance Co* 40 Cal 570 21 I C 258

5 *Jay s Ltd* v *Jacobs* (1933) 1 Ch 411

6 *See* S 25 (3) of the Companies Act, 1956 and *Srinivas ah* v *Vellore Varadakshmi Bank Ltd* I L R 1954 Mad 553 (1954) 1 M L J 541 1954 Mad 802

7 *F S Abdel Qayum* v *Manindra Land & Building Corporation Ltd* 1955 A L J 29 (1955) 25 Com Cas 143 1955 All 192

8 Halsbury s Laws of England Vol 5 pp 147 148

any class of insurance business, namely, fire, marine, life, general or miscellaneous insurance business as defined in clauses (6A), (6B), (11), (13A) and (13B) of section 2 of the Act But as regards an insurer carrying on business in life insurance contracts before the 27th day of January, 1937, under the Life Assurance Companies Act, 1912, the Controller will have no power to call upon him requiring him to change his name So also restriction provided in sub-section (3) will apply to all insurers other than a provident society as defined in Part III of the Act before the commencement of the Act and after the expiry of six months from the commencement thereof[1]

4 **"Provident society"** —"Provident society" as defined in Part III of the Act means a person who, or a body which, not being an insurer registered for the time being of persons (whether corporate or unincorporate) under Part II of this Act (Insurance Act, 1938) carries on the business of insuring the payment of (*a*) an annuity of or equivalent to one hundred rupees or less, payable for an uncertain period, or (*b*) a gross sum of one thousand rupees or less, whether paid or payable in a lump sum or in two or more instalments over a certain period, exclusively in both cases (*a*) and (*b*) of any profit or bonus not being a guaranteed profit or bonus on the happening of any of the contingencies as follows —

(*a*) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency ,

(*b*) failure of issue ,

(*c*) the occurrence of a social, religious or other ceremonial occasion ,

(*d*) loss of or retirement from employment ,

(*e*) disablement in consequence of sickness or accident

(*f*) the necessity of providing for the education of a dependent ,

(*g*) any other contingency which may be prescribed or which may be authorised by the State Government with the approval of the Central Government.[2]

5 **Appeal** —An order by the Controller under this section directing an insurer to change his name is appealable and such appeal shall lie to the court having jurisdiction [3]

Requirements as to capital

6 No insurer incorporated after, or who commenced carrying on the business of life insurance in India whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the company

SYNOPSIS

1 *Legislative changes*
2 *Applicability, scope and object*
3 *'Working capital*
4 *"Preliminary expenses in the formation of a company*
5 *'A net sum of not less than fifty thousand rupees '*

1 *See* Note under section 67 *infra*
2 *See* Part III Ss 65—91 *post*
3 *See* S 110 (6) and Note to that section *post*

1 **Legislative changes** —The word "India" occurring in the section has been substituted by Act LXII of 1956

2 **Applicability, scope and object** —The provisions of this section apply (*i*) to all insurers carrying on any class of insurance business incorporated after the 26th day of January, 1937, and (*ii*) to those insurers whether incorporated on or before the said date but commencing to carry on the business of life insurance in India either solely or in common with any other business after the 26th day of January, 1937 Thus, a company incorporated before the 26th day of January, 1937, but commenced life insurance business after that day must have the required working capital as provided in this section, but a company incorporated before the 26th day of January, 1937, but doing insurance business after that date other than life insurance business will not be required to have the required working capital for its registration

This section has to be read subject to sub-sections (2) and (4) of section 3 of the Act as clause (*d*) of sub-section (2) of section 3 enjoins that an application for registration of the insurer must accompany, amongst others, an affidavit affirmed by his principal officer authorised in that behalf declaring that the provisions as to the working capital as provided in this section have been complied with, that is to say, the insurer, if the provisions of this section are applicable to him, has the working capital of Rs 50,000 exclusive of the deposit contemplated under section 7 of the Act and of the preliminary expenses in the formation of the company Further, failure to file the said affidavit as required under the said clause, his application for registration will not be a valid application under sub-section (2) of section 3 and his application may be rejected on that ground Moreover, it will be either a non-compliance with the provisions of the Act or a contravention thereof and hence his registration will be liable to be cancelled under sub-section (4) of the Act

The object of the section may be gathered from the report of the Select Committee thus 'In the case of individuals as well as firms and companies, the insurer must have adequate working capital at his disposal before commencing business and the minimum sum necessary is exclusive of deposits and of preliminary expenses incurred in the floating of a company" The section also serves two purposes *viz* , (*i*) it prevents small companies having mushroom growth from carrying on insurance business, and (*ii*) it ensures more effective management and assures the stability of the company, which is necessary specially in case of life insurance business where ordinary man takes a policy by way of investment to provide funds to himself at his old age or to his family on death

3 **"Working capital "**—The ordinary dictionary meaning of the word 'capital" in relation to business is fund, stock or money with which company or person enters into business It also means accumulated wealth used in producing more It may be fixed, *e g* , machinery, etc or circulating or floating, *e g* , goods, money, etc The word 'capital' in company law is used in various senses, such as, (*i*) nominal or authorised capital, (*ii*) issued capital, (*iii*) paid-up capital (*iv*) reserve capital or more precisely known as reserve liability, (*v*) equity share capital, (*vi*) loan capital, (*vii*) fixed and current or circulating capital, and (*viii*) quasi-capital or statutory funds, namely, share premium account and capital redemption reserve fund The nominal capital is, strictly speaking, not capital at all, it represents only an authority by the shareholders to the directors to create new capital by issue of shares and hence it is known as

'authorised capital" but issued capital is really capital The phrase "loan capital' is a contradiction in terms and denotes the debentures and debenture stock issued by the company and the holders of these securities are creditors of the company and have not, as such, a contributory interest in the company in the way that a member has [1]

Under the Companies Act, 1956, the share capital of a company limited by shares formed after the commencement of that Act, or issued after such commencement shall be of two kinds only, namely, (*a*) equity share capital, and (*b*) preference share capital [2] The main characteristics of a preference share capital are that (*i*) as regards dividends, it must carry a preferential right to a fixed amount, and (*ii*) as regards capital, in the event of a winding up or other arrangement to repayment of capital, there must be a preferential right to be repaid the amount of the capital paid up on such share [3]

The phrase 'working capital" does not find any place in the companies Act, 1956 although every company commencing business or about to commence business must have a working capital, which is generally formed from the issued capital of the company, issued either in cash or in kind But the phrase "working capital" as intended to be meant under this section must be a capital in cash and not in shares which is required to be held in cash as ready money with a view to defray the day-to-day expenses of the company in its management of the business and to keep the company agoing without any monetary embarrassment The Insurance Act, 1938, has recognised for the first time a 'working capital as a form of statutory requirement and hence such capital comes within 'quasi-capital' or statutory funds [4]

4 **" Preliminary expenses in the formation of a company "** — A company is brought into existence by a person or persons known as promoter or promoters "The term 'promoter' is a term not of law, but of business, usefully summing up in a single word a number of business operations familiar to the commercial world by which a company is generally brought into existence "[4] The word promoter is "a short and convenient way of designating those who set in motion the machinery by which the Act (the Companies Act) enables them to create an incorporated company "[5] A person who originates the scheme for the formation of the company, has the memorandum and articles prepared, executed and registered, and finds the first directors, settles the terms of the preliminary contracts and prospectus (if any) and makes arrangements for advertising and circulating the prospectus and placing the capital is a promoter in the fullest sense of the term Promoters may be of three classes *viz*, (*i*) professional promoters who make a business of the promotion of companies and are always on the lookout for an opportunity of making money by forming and floating a company, (*ii*) occasional promoters are those who now and then see and take an opportunity for bringing out a company and have an instinct for a good thing, and (*iii*) promoters *pro hac vice* who engage in the work of promotion in a particular case and cannot be classed as professional or occasional promoters [6]

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1 *See* Palmer's Company Law 20th Edn pp 26—208

2 *See* section 86 Companies Act 1 of 1956

3 *See* section 85 of the Companies Act 1956 *see also* *Re John Smith's Tadcaster Brewery Co Ltd* (1954) 1 All E. R. 751 *Re Duncan Gilmour and Co, Ltd* (1954) 2 All E R. 671

4 *Whaley Bridge etc Co v Green* (1880) 5 Q B D 109 per Bowen J

5 *Erlanger v New Sombrero Phosphate Co* (1878) 3 App Cas 1218 per Lord Blackburn

6 *See* Palmer's Company Precedents 17th Edn pp 22—42

These promoters expect generally to make or obtain some profit or advantage out of or in relation to the transaction and they also agree to pay the preliminary expenses, which the company after its incorporation reimburses to them, but there should be provisions to that effect in the articles of association to pay such costs and there should be disclosure that the promoters are making profits and also the amount thereof Preliminary expenses may include the costs of drawing of memorandum and articles of association any contract drawing fees of those documents, printing, stamp duties and registration, that is, all out-of-pocket expenses It may also include the promoters remuneration or profit Hence, advisedly such expenses which are found generally from the current fund of the company have been excluded from computing the working capital' of an insurance company under this section

5 **"A net sum of not less than fifty thousand rupees"**—A 'working capital' required under this section is a net sum of not less than fifty thousand rupees The phrase "net sum means a sum free from deduction or remaining after necessary deductions as opposed to the phrase "gross sum" which means a sum without any such deductions The minimum amount required under this section for the working capital' is rupees fifty thousand without any deduction Thus it has been provided in the section that the amount of rupees fifty thousand should be exclusive of the amount of deposit to be made under section 7 of the Act and of the preliminary expenses in the formation of the company

6 **Mutual Insurance Company and Co operative Life Insurance Society**—Similar provisions have been made in respect of Mutual Insurance Company and Co-operative Life Insurance Society [1]

7 **Provident Society**—Provisions of a working capital have also been made in respect of a Provident Society [2]

Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares

6A (1) No public company limited by shares having its registered office in the States shall carry on life insurance business, unless it satisfied all the conditions, namely ,—

(*i*) that the capital of the company consists only of ordinary shares each of which has a single face-value ,

(*ii*) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares whether existing or new

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face-value

1 *See* section 97 *post*

2. *See* section 72 *post*

or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him

(3) No public company as aforesaid which carries on life insurance business shall, after the commencement of the Insurance (Amendment) Act, 1950, issue any shares other than ordinary shares of the nature specified in sub-section (1)

(4) A public company as aforesaid which carries on life insurance business—

(*a*) shall maintain, in addition to the register of members to be maintained under the Indian Companies Act, 1913 (VII of 1913), a register of shares in which shall be entered the name, occupation and address of the beneficial owner of each share, and shall incorporate therein any change of beneficial owner declared to it within fourteen days from the receipt of such declaration ,

(*b*) shall not register any transfer of its shares—

(*i*) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913 (VII of 1913), the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others, and in the latter case giving the name, occupation and address of the beneficial owners, and the extent of the beneficial interest of each , and

(*ii*) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent of its paid up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent of such paid-up capital, unless the previous sanction of the Central Government has been obtained to the transfer

(5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall

within thirty days from the commencement of the Insurance (Amendment) Act, 1950, or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in that share

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this sub-section

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this sub-section, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realisation of dividend such individual shall, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person

(6) If the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the commencement of the Insurance (Amendment) Act, 1950, exceeds two and a half per cent of its paid-up capital where that person is a banking company or an investment company, or five per cent of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares

(7) Where the total paid-up holding of any person in the share of a company referred to in sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950, exceeds five per cent of its paid-up capital where that person is a banking company or an investment company or ten per cent of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government

(8) If after the expiry of three years or of such further period as may be allowed to any person under sub-section (7), the total paid-up holding of any such person had not been reduced to the

limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator General of the State in which the registered office of the company concerned is situate and the Administrator-General shall take such steps as may be necessary for taking charge of any property who has so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed

(9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of any such company as is referred to in sub section (1), no such company shall refuse to register the transfer of any shares where the transfer is for the purpose of securing compliance with the provisions of sub-sections (7) and (8)

(10) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the operation of sub-sections (6), (7) and (8) any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company

Explanation —For the purpose of this section, the holding of a person in the shares of a company shall be deemed to include—

(*i*) the total paid-up holding in such shares held by such person in the names of others , and

(*ii*) if any shares of the company are held—

(*a*) by a public limited company, of which such person is a member holding more than ten per cent of the paid-up capital, or

(*b*) by a private limited company, of which such person is a member, or

(*c*) by a company of which such person is a managing director, manager, managing agent or in which he has a controlling interest, or

(*d*) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be

SYNOPSIS

1 *Legislative changes*
2 *Date of commencement of the Insurance (Amendment) Act, 1950*
3 *Applicability*
4 *Object and scope*
5 *Share capital and calls on share, sub section (1)*
6 *Voting right of every shareholder, sub-section (2)*
7 *Maintenance of registers, sub section (4) (a)*
8 *"Shall not register any transfer of its share," clause (b) of sub-section (4)*
9 *Person having interest in any share to declare his interest, sub section (5)*
10 *Voting right in excess holding of shares sub section (6)*
11 *Reduction of total paid-up holding within limits as future, effect of sub sections (7) and (8)*
12 *Company not to refuse the transfer of any shares, sub-section (9)*
13 *Power of the Central Government sub-section (10)*
14 *"The interest of a person in the shares of another person" meaning of—Explanation*

1 **Legislative changes**—This section was inserted by Act XLVII of 1950

2 **Date of commencement of the Insurance (Amendment) Act 1950**—The Insurance (Amendment) Act, [illegible] from 1st June 1950

3 **Applicability**—The provisions of this section are applicable to an insurer which is a public company [illegible] has its registered office in any of the States in India and is carrying on life insurance business. But the application of the provisions of this section has been deferred for a period of three years from 1st January 1951 to any company in respect of (i) any shares other than equity shares issued by it before the commencement of the Insurance (Amendment) Act, 1950 [illegible] value, or (ii) any shares the proceeds of which is not the same for all of them, when these shares were [illegible] shares in accordance with the Insurance (Amendment) Act, 1950 [illegible]

provided therein, sub-section (3) also restricts it to issue any shares other than ordinary shares of the nature specified in sub-section (1) The section again gives certain directives to such a company in the matter of maintaining a register of shares in conformity with clause (*a*) of sub-section (4) and transfer of its shares in the manner provided in sub clauses (*i*) and (*ii*) of clause (*b*) of sub section (4) Sub-section (5) of this section provides for a declaration to be made by every person having any interest in any of its shares in terms mentioned therein Sub-sections ( ) and ( ) of this section enjoin certain duties upon a banking company or an investment company or any other company in the matter of holding total paid-up capital and the right of voting of the shareholder in respect of excess holding of shares Sub section (7) again prescribes the manner in which excess holding of shares has to be disposed of Sub-section (8) provides for the consequences of failure to dispose of excess holding of shares and sub-section (9) directs the company irrespective of the provisions in the memorandum or articles of association to register the transfer of those shares Sub-section (10) empowers the Central Government to exempt certain insurance companies from the operations of sub-sections (6), (7) and (8) of this section The holding of a person in the shares of a company for the purposes of the section has been explained by an explanation appended to the section

5 **Share capital and calls on share, sub section** (1) —A company, whether public or private and limited by shares or otherwise has to be incorporated now under the Companies Act (I of 1956) The Insurance Act, 1938, or its numerous amendments cannot bring any company into existence so as to confer on it a legal personality as the Companies Act does But a company incorporated as such has to comply with the various provisions of the Insurance Act 1938, if it has to carry on insurance business in India and this section is one of such provisions which a public company limited by shares has to comply with when it carries on or commences to carry on life insurance business and has its registered office in any of the States of India It has already been noticed that after the commencement of the Companies Act, 1956, that all share capital whether of existing companies limited by shares if such shares are issued after the commencement or of such companies newly formed can be only of two kinds *viz*, equity share capital and preference share capital, but other kinds of share capital if already issued before the commencement of the said Act, are not affected by the Companies Act 1956 [1]

The provisions of sub-section (1) of this section restrict such share capital of a public company limited by shares and having its registered office in the States and carrying on life insurance business to only one kind of share capital *viz*, ordinary shares each of which has a single face-value and under the Companies Act, 1956 such ordinary shares should be equity shares Such life insurance companies cannot have any other kinds of shares and even of preference share capital as contemplated by the Companies Act, 1956

A shareholder of a company limited by shares need not pay the whole nominal amount of his share to the company all at once when acquiring such share The moneys payable on the share have to be paid by him when a call for payment is made upon him by the company or at the dates fixed for payment by the terms of issue of shares Although, strictly speaking an instalment payable by the terms of issue at a fixed date is not a call, the articles of a company usually provide that any sum payable at a fixed day,

1 *See* S 86 Companies Act 1956 and Note 3 under S 6 pp 140-141 *supra*

shall be deemed to be a call duly made and payable on the date on which it became due and the consequences of non-payment as provided therein shall also apply to such a case [1] But if his shares have been issued as paid up, whether for cash or otherwise, he would be wholly exempt from calls So also when his shares have been issued as partly paid up or if some prior holder has paid in part he would be *pro tanto* exempt from calls

A call is made by the directors of the company pursuant to the articles of association of the company In making a call care must be taken that the directors making it are (*a*) duly appointed and (*b*) duly qualified, that the directors' meeting has been duly convened that the necessary quorum is present, and that the resolution making the call is duly passed and it specifies the amount of call, the time and place of payment and that a proper entry is made in the minutes [2]

Calls should be made *pari passu* unless the articles otherwise provide Section 91 of the Companies Act, 1956, provides that where after the commencement of that Act, any calls for further share capital are made on shares, such calls shall be made on a uniform basis on all shares falling under the same class The provision in the Act of 1913 authorising a company "to make arrangements on the issue of shares for a difference between the shareholders in the amounts and time of payment of calls on their shares" has been omitted in the Act of 1956 on the consideration that such power was open to abuse [3]

Clause (*ii*) of sub section (1) of this section provides that all shares, whether existing or new, shall have the same paid-up amount but exception to this rule has been made in respect of those shares where the company allowed payment of calls on such shares within a period not exceeding one year

6 **"Voting right of every shareholder," sub section (2)** —A shareholder's vote is a right of property which he may use as he pleases The propriety or impropriety of his motive in casting such vote this way or that way is immaterial and he is always at liberty to exercise his own judgment as to how he shall vote [4] Section 87 of the Companies Act, 1956, *inter alia*, provides that every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company, and his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company Section 89 of the same Act also provides that if at the commencement of the said Act any shares, by whatever name called of any existing company limited by shares carry voting in excess of the voting rights attaching under section 87 aforesaid to equity shares in respect of which the same amount of capital has been paid up, the company shall, within a period of one year from the commencement of the Act, *i e*, 1st April, 1956, reduce the voting rights in respect of the shares first mentioned so as to bring them into

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1 See *Crosker* v *Bank of Wales* (1863) 4 Giff 314 *Alexander* v *Automatic Telephone Co* (1900) 2 Ch 56 *Whittaker* v *Kershaw* (1890) 45 Ch D 320 *Re Russian Spratts Ltd* (1899) 2 Ch 149

2 See *Hawbeach Coal Co* v *Teague* (1860) 5 H and N 151 *Iron Ship etc Co* v *Blunt* (1868) L R 3 C P 484 *Sharp* v *Dawes* (1876) 2 Q B D 26 *Garden Gully United Quartz Mining Co* v *McLister* (1875) L R 1 App Cas 46 *Austin's* case (1871) 24 L T 932 *Re Cattley and Co* (1889) 42 Ch D 209 *Cornwall etc Mining Co* v *Bennett* (1860) 5 H and N 423

3 *See* S 92 of the Companies Act 1956

4 See *Pender* v *Lushington* (1877) 6 Ch D 70 *North West Transportation Co* v *Beatty* (1887) 12 App Cas 589 *Burland* v *Earle* (1902) A C 83

conformity with the voting rights attached to such equity shares as provided under section 87 In short, section 87 of the Companies Act prescribes that voting rights should in all cases be in the same proportion as the amount of share capital paid up Section 92 of the same Act, while empowering the company to accept unpaid share capital although the same is not called up yet the member shall not be entitled to any voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable The object of section 92 is to make it clear that payment of any amount voluntarily towards the uncalled share capital, will not give voting rights in respect of that amount "[1]

The provisions in sub-section (2) of this section of the Insurance Act are in line with the provisions of the Companies Act, 1956, that is to say, the voting right of every shareholder of any public company limited by shares and doing life insurance business shall in all cases be strictly proportionate to the paid up amount of the shares held by him

Where a share carries a vote, the shareholder has the right to have his vote recorded [2] Consequently, to such a case the rule in *Foss* v *Harbottle*,[3] is not applicable The rule in *Foss* v *Harbottle* postulates that any member of the minority cannot take legal proceedings against the directors for their fraudulent acts when at the general meeting the majority resolved that no action should be taken against them This rule has been clearly expressed by Jenkins, L J in *Edwards* v *Halliwell* [4]

7 **Maintenance of registers, sub-section (4) (a)** —Under section 150 of the Companies Act, 1956, every company must keep in one or more books a register of its members, and enter therein the following particulars (*a*) the name address and the occupation (if any) of each member, (*b*) the date at which each person was entered in the register as a member, and (*c*) the date at which any person ceased to be a member The same section further provides that in case of a company having a share capital the shares held by each member, distinguishing each share by its member, and the amount paid or agreed to be considered as paid on those shares For non-compliance with these provisions a fine not exceeding Rs 50 for every day so long the default continues has been provided [5] In the case of a firm the firm itself cannot be registered as a member but only the partners of the firm can be registered as joint-holders [6] In the case of the subscribers of the memorandum, no allotment is required and no entry in the register of members is necessary in order to constitute membership [7]

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1 *See* Report of the Joint Committee para 45

2 See *Pender* v *Lushington* (1877) 6 Ch D 70 (in the instant case Jessel M R observed that the right of a member to record his vote was an individual and not a corporate right of that member) *see* also *Edwards* v *Halliwell* (1950) 2 All E R 1064

3 (1843) 2 Ha e 46)

4 (1950) 2 All E R 1064

5 *See* S 31 of the Act of 1913 and S 110 of the English Companies Act

6 See *Sedon* v *Whiteman* (1910) 1 K B 868 the same on appeal in (1910) A C 514 *In Glory Paper Mills Co* (1894) 3 Ch 473 ; *See* also *Hickerishaw's* case (1873) 8 Ch App 831 where it has been said that a firm c n be registered in England under its partnership name although it is not a legal entity

7 *Re London and Provincial etc Co* (1877) 5 Ch D 525 *Nicol's* case (1885) 29 Ch. D 444 *Alexander* v *Automatic Telephone Co* (1900) 2 Ch 63 *Re Esperto Trading Co* (1879) 12 Ch D 191 where a subscriber who had not been placed on the register was held liable after a lapse of nine years for the shares for which he had subscribed but see *Dunster's* case (1894) 3 Ch 473 when a subscriber subscribing on behalf of his firm was discharged from the obligation

Besides maintaining a register of members as aforesaid clause (*a*) of sub-section (4) of this section enjoins that a public company limited by shares and having its registered office in any State in India must maintain a register of shares and enter therein name, occupation and address of the beneficial owner of each share Moreover, any change of benefical owner declared to it and such change shall be incorporated in the register of share within fourteen days from the receipt of such declaration

8 **"Shall not register any transfer of its share" clause (b) of sub-section (4)** —Ordinarily under the Companies Act, 1956, a transfer of shares is not registered unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company along with the share certificate and where no such certificate is in existence, along with the letter of allotment of the shares A transfer of shares may also be registered by the Board of Directors when the instrument of transfer signed both by the transferor and transferee is lost but in such a case an application in writing has to be made to the company by the transferee and such application must bear the required stamp for an instrument of transfer and it must be proved to the satisfaction of the Board that the instrument of transfer so signed by them is lost A transfer of share can also be registered and the applicant can be registered as shareholder where the right to that share in the company has been transmitted by operation of law [1] An application for the registration of a transfer of the shares or other interest of a member in a company may be made either by the transferor or by the transferee [2]

There is no definition of the expression duly stamped in the Companies Act, but it has been defined in section 2 (11) of the Stamp Act Where adhesive stamps have been affixed to the instruments of transfer but they have not been cancelled, the instruments are not 'duly stamped and the company is justified in refusing registration of the shares concerned Where a company registers an instrument of transfer not duly stamped its action is illegal but it is not liable to make good the amount of the stamp duty [4] A registration of transfer without production of the share certificate is not invalid although it is illegal to do so without a proper instrument of transfer [5]

In transferring his share a shareholder may sign a blank transfer and hand it over to a purchaser or mortgagee with authority to the holder of it for the time being to fill in the name of the transferee , and such a transfer when filled up can be sent in for registration and no objection can be raised by the company to its validity A blank transfer transmits the transferor s title to the shares, both legal and equitable and the transferee can fill up the blank and ask for the registration of his name in the books of the company without the risk of his right being defeated by the registered owner or any other person deriving title from the registered owner [6] But the company cannot register a blank transfer unless the blank is filled up and it is duly stamped [7]

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1 *See* S 108 Companies Act 1956
2 *See* S 110 of the same Act
3 *Coronation Tea Co Ltd In re* 1961 Cal 528 *Union of India v Kulu Valley T ons ports Ltd* (1958) Com Cas 29 *Babulal Chaukhani v Western India Theatres Ltd* (1958) Com Cas 565
4 *In re Jagadish Mills Ltd* 56 Bom L R 525
5 *Philipose v Vanchinad Rubber Produce Co Ltd* (1952) Trav Co 253
6 *Arjun Prasad v Central Bank of India* 34 Pat 8 1956 Pat 32
7 *Bank of Hindusthan Ltd v Kowtha Surya narayana Rao* (1958) Com Cas 71

Where the stated consideration in the instrument of transfer is less than the real consideration, the directors may refuse to register the transfer [1] Where the company refuses to approve a transfer of shares, it is open to the transferee to apply under section 155 of the Companies Act, 1956, for rectification of the share register Section 111 of the same Act providing an appeal against such refusal is no bar to such an application [2] Conversely if a transfer is registered in contravention of law, the register may be rectified by the Court [3] A company is not bound to register a transfer at once It may inquire *e g*, as to the authenticity of the transfer [4]

An appeal to the Central Government against refusal to register a transfer has been provided in section 111 (3) of the Companies Act The appeal may be preferred by the transferor or transferee or the person who gives intimation of the transmission by operation as law, as the case may be Such appeal has to be preferred within two months of the receipt by him of the notice of refual Section 155 of the Companies Act, 1956, confers power upon the Court to rectify the register of members in cases where the name of any person (*a*) is without sufficient cause entered in the register of members, or (*b*) after having been entered in the register is, without sufficient cause, omitted therefrom, or (*c*) where default is made or unnecessary delay takes place in entering on the register the fact of any person having become, or ceased to be, a member In all cases where justice requires it, the order to rectify will be made *nunc pro tunc* , but where moot questions requiring findings on disputed facts had to be determined, the party should be referred to a regular suit [5] A forged and fraudulent transfer being a nullity, the register may be rectified on that ground [7]

In appeal the Central Government has to decide whether in exercising their power the directors are acting oppressively *Prima facie*, the exercise of such authority would be judicial It is immaterial that the statute which confers the power upon the Central Government does not expressly set out the extent of the power but the very nature of the jurisdiction requires that it is to be exercised subject to the limitations which apply to the Court under section 155 where the Court has to act judicially to adjudicate upon the right exercised by the directors in the light of the powers conferred upon them by the Articles of Association [8] In the registration of any transfer of shares by a public company limited by shares and carrying on life insurance business as aforesaid, besides complying with the provisions of the Companies Act, 1956 as aforesaid the transferee should furnish a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others When the shares are proposed to be held as a nominee, he should give the name occupation and address of the beneficial owners and the extent of the beneficial interest of each unless this is done no registration of the shares can be made although compliance with the provisions of the Companies Act has been made in respect of such transfer

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1 *Moyn rd* v *Consolidated Kent Collieries* (1903) 2 K b 121

2 *Corporation Tea Co Ltd In re* supra

3 *Re Greene* (1949) 1 All E R 167 : (1949) Ch 333

4 *Ireland* v *Hart* (1902) 1 Ch 522 *Re Otto Kafje Diamond Mines* (1933) 1 Ch 618 *Societe Generale de Paris* v *Walker* (1885) 11 App Cas 20

5 *Re Sussex Brick Co* (1904) 1 Ch 598 , *Re Imperial Chemical Industries Ltd* (1936) 1 All E R 463

6 *In re Dhalakhat Tea Co Ltd* , 1957 Cal 476

7 *Peoples Insurance Co Ltd* v *G R E Hind & Co Ltd* (1961) Com Cas 61

8 *Haringar Sugar Mills Ltd* v *Shyam Sunder Jhunjhunwala* (1961) 2 S C A 384 : (1961) 31 Com 387 : 1961 S C 1669

Further, where after such transfer, if it appears to the company that the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent of its paid-up capital, such transfer cannot be registered unless the previous sanction of the Central Government has been obtained to such transfer Similarly, in the case of a banking or an investment company, where the total paid-up holding in the shares of the company exceeds two and a half per cent of the paid-up capital, previous sanction of the Central Government will be required to register such transfer

9 Person having interest in any share to declare his interest sub-section (5) —Sub-section (5) of this section requires a person who has any beneficial interest in any share of the company which stands in the name of another person in the register of members of the company must make a declaration in the prescribed form to the company declaring his interest in such share The prescribed form of such declaration shall be countersigned by the person in whose name the share is registered and such declaration has to be made within thirty days from the commencement of the Insurance (Amendment) Act, 1950 *i e*, 1st June, 1950 or from the date on which he acquires such interest, whichever is later This failure to make the required declaration within the time aforesaid will entail him to lose his right or title whatsoever in that share But where the person in whose name the share is registered refuses to countersign the prescribed declaration form as aforesaid, the person having interest therein will not lose his right or title in that share to establish his right thereto in a Court of law

The second proviso to sub-section (5) confers the voting rights of a shareholder in respect of shares belonging to him and where he has made the required declaration as aforesaid although those shares are held by a company in its name either in pursuance of any trust or for collection of dividend and for the purpose of safe custody and even notwithstanding anything contained in the Companies Act or in the memorandum or articles of association of the company

10 Voting right in excess holding of shares sub section (6) —Sub-section (6) of this section restricts the voting right of a shareholder when he is an individual, a banking company and an investment company Thus where the total paid-up holding of any individual in the shares of a company as contemplated under this section exceeds five per cent of its paid-up capital he shall not be entitled to any vote as a shareholder of a company in respect of such excess holding of shares The same is the case with a banking company or an investment company when its total paid-up holding in the shares of the company exceeds two and half per cent of its paid-up capital In both the cases the excesses of 5 per cent and 2½ per cent respectively must be on the commencement of the Insurance (Amendment) Act 1950, *i e*, 1st June, 1950 [1]

11 Reduct on of total paid up holding within limits its failure, effect of sub-sections (7) and (8) —Sub-section (7) of this section provides for the disposal of the excess of the total paid-up holding of any person in the share of a company contemplated under this section, when such total paid up holding exceeds five per cent of its paid-up capital in the case of a banking or an investment company and ten per cent in any other case, at the date of the commencement of the Insurance (Amendment) Act, 1950, *i e*, 1st June 1950 The time-limit within which such disposal has to be made within three years from the aforesaid date or in any case within a further period not exceeding two years as may be allowed to him by the Central Government Hence

1 *See* also Note 6 *supra*

under this sub-section the Central Government has been empowered to grant further extension of time if the disposal of the excess paid up holding cannot be made within three years but such extension cannot exceed two years in any case

The effect of the failure in disposing of the excess paid-up holding within the said period or within the extended period if granted by the Central Government is that any shares remaining in excess of the permissible limits as stated in the foregoing paragraph shall vest in the Administrator-General of the State in which the registered office of the company concerned is situate The Administrator-General of the State concerned has been empowered to take charge of the said excess shares which have so vested in him and to dispose of them He has also been empowered to dispose of the sale proceeds of those shares in such manner as may be prescribed

Rule 17B of the Insurance Rules, 1939, provides that in such a case the Administrator-General shall furnish full details of the shares so vested in him to the Controller and he shall try as early possible to sell the shares either wholly or in part and either in the open market or by private sale, at a price not lower than the price fixed by the Controller who may vary the price from time to time The Administrator-General shall then hand over the proceeds to such person who in his opinion, is by law entitled thereto

12 Company not to refuse the transfer of any shares sub-section (9) —Sub-section (9) permits the company to register the transfer of shares where such transfer is made for the purpose of disposing the shares held in excess of the permissible limits as provided in sub-section (7) or when such disposal is made by the Administrator-General by virtue of sub-section (8) But such transfer to be registrable must conform to the provisions laid down in sub-clauses (*i*) and (*ii*) of clause (*b*) of sub section (4) of this section although such transfer may be contrary to anything contained in the Companies Act or in the memorandum or articles of association of the company

13 Power of the Central Government sub section (10) —The Central Government has been given the discretion by sub-section (10) of this section to exempt an insurance company from the operations of sub sections (6), (7) and (8) of this section where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections if the other insurance company is or is to be made a subsidiary company of the insurance company In exercising this discretion of exemption the Central Government has power to impose such restrictions as it may think fit to impose on the insurance company to which such exemption is granted

14 'The holding of a person in the shares of a company,' meaning of Explanation —The total paid-up holding of any person in the shares of a company within the meaning of this section has to be determined according to the meaning given to the phrase the holding of a person in the shares of a company' in the Explanation appended to the section The meaning given in the Explanation is for the limited purposes of this section The expression would mean to include not only the total paid-up shares in his own name but it will also include the total paid-up holding in such shares by him in the name of others If any shares of the company are held—(*a*) by a public limited company of which such person is a member when it holds more than ten per cent of the paid-up capital or (*b*) by a private limited company, of which such person is a member or (*c*) by a company of which such person is a managing director, managing agent or in which he has a

controlling interest, or (*d*) by a firm in which such person is a partner, or (*e*) by such person jointly with others, in each of these cases, such part of the total paid-up holding of the company or firm or of the total joint holding in those shares would be proportionate to the contribution made by him to the paid-up capital of the company, the firm or the joint holding as the case may be

Provision for securing compliance with requirements relating to capital structure

6B (1) For the purpose of enabling any public company carrying on life insurance business to bring its capital structure, into conformity with the requirements of section 6A, an officer appointed in this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913)—

(*a*) examine any scheme proposed for the purpose aforesaid by the directors of the company

Provided that—

(i) if the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon, and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital,

(*b*) invite objections and suggestions in respect of the scheme so proposed, and

(*c*) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1)

(3) The decision of the High Court where an appeal has been preferred to it under sub-section (2) or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Officer his appointment and functions*
4 *"Any scheme," sub-section (1) (a)*
5 *Scheme, requisites and nature of, sub-section (1) proviso*
6 *Appeal, sub-section (2)*
7 *Finality of the decision, sub-section (3)*

1 **Legislative changes** —This section like section 6A has been inserted by Act XLVII of 1950

2 **Object and scope** —The object of this section is to help any public company carrying on life insurance business to bring its capital structure within the limits required under the foregoing section, *viz*, section 6A Its main purpose is to enable such company to implement the provisions of section 6A so that it cannot have any difficulty in carrying on the life insurance business at the commencement of the Insurance (Amendment) Act, 1950

To achieve the object and to serve the purpose, the Central Government has been empowered to appoint an officer, notwithstanding anything contained in the Companies Act, to examine, scrutinise or modify any scheme if there is any, prepared by such company in terms of this section and intending to secure compliance with the requirements of its capital structure as envisaged in section 6A of the Act Such officer has also been empowered to sanction such scheme if found feasible or to modify it according to the exigencies of each case The scheme has to be prepared and drawn by the directors of the intending company keeping in view the provisions of section 6A and this section A right of appeal has been conferred on the shareholder of the said intending company and other person aggrieved by the decision of the said officer when he sanctions such scheme such appeal will lie to the High Court of the State where the registered office of the insurer is situate The appellate decision of the High Court or the order of the officer sanctioning or modifying the scheme, if there be no appeal therefrom, has been made final

3 **Officer, his appointment and functions** —The Central Government has been empowered to appoint the officer contemplated under this section The officer when so appointed by the Central Government will have the following functions

(*a*) he will examine any scheme made by the directors of a public company having its registered office in any States of India and carrying on life insurance business intending to implement the provision of S 6A ,

(*b*) he will invite objections and suggestions in respect of the proposed scheme placed before him

(*c*) he will consider the objections and suggestions offered in respect of the scheme submitted to him , and

in considering the said scheme the officer has the power either to sanction the scheme *in toto* or to modify same as he may consider necessary or desirable Before taking the scheme into consideration it is the duty of the said officer to be satisfied that (*a*) the scheme was placed before a meeting of the shareholders of the company for their opinion , (*b*) the opinion of the shareholders in this regard had been forwarded to him with the scheme , and (*c*) the scheme itself does not involve any decrease in the liability of the shareholders in respect of unpaid up share capital of the company

4 **'Any scheme' sub-section (1)** —Schemes, under the Companies Act, are generally of two kinds *viz* , (*a*) schemes of compromise and arrangement, and (*b*) schemes of reconstruction and amalgamation Sections 391 to 395 of the Companies Act 1956 provide for these schemes Besides a scheme may also involve some other proceeding, such as a reduction of capital or a stay of a winding up In such a case the procedure for that purpose must be followed in

conjunction with the procedure of the section under which the scheme is effected [1]

The expression "any scheme" under this section must be a scheme for securing compliance with the requirements relating to capital structure as enjoined under section 6A Section 391 of the Companies Act, 1956, also includes within its fold re-arrangement of capital structure of the company by consolidation of shares of different classes or by division of shares into shares of different classes or by both these methods The word "arrangement" as defined in section 390 (*b*) of the Companies Act includes a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods All modes of reorganizing the share capital, including interference with preferential and other special rights attached to shares can properly form part of an "arrangement' with members [2] The principal difference between section 391 of the Companies Act, 1956 and this section of the Insurance Act, 1938, is that in the case of the former the scheme in order to become operative requires the sanction of the court, while in the case of the latter the sanction of the officer appointed by the Central Government in this regard is necessary It has been observed by the Privy Council in *Srimati Premila Devi* v *Peoples Bank*,[3] that a scheme, when it is sanctioned, cannot be varied by a mere agreement of the parties as such a sanctioned scheme comes to have statutory force and has greater sanctity than a mere agreement between the parties affected But if any part of the scheme includes anything which the parties cannot bind themselves to do, then that part of the scheme has to be treated as a nullity [4]

5 **Scheme, its requisites and nature** —A scheme, under this section before it can be placed before the officer appointed by the Central Government for sanction, must satisfy the following (*i*) that it has been placed before a meeting of the shareholders for their opinion, (*ii*) that the opinion of the shareholders on the scheme has been forwarded to the officer along with the scheme, and (*iii*) that the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital If the scheme lacks in any of the above requirements, the officer concerned will refuse to examine it Further the scheme must be a scheme prepared by the directors of the company for the purpose of securing compliance with the requirements relating to capital structure as required under section 6A of the Insurance Act, 1938 When the scheme has not been prepared for the purpose aforesaid the officer concerned has no jurisdiction to entertain it

In according sanction to any scheme under the Companies Act, 1956, particularly, schemes under section 391, the Court generally sees that in addition to the provisions of the Act being complied with, the members or creditors or any class or classes of them were fairly represented by those who attended the meeting, that the statutory majority were acting *bona fide* and not coercing the minority in order to promote any other interest adverse to those of the class represented by them and the arrangement is such as an intelligent honest man belonging to the class concerned or affected, might reasonably

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1 *See* Palme 's Company Law 20th Edn p. 665

2. See *Re St James s Court Estate* (1944) Ch 6 *Re Guardian Assurance Co* (1917) 1 Ch 431 *Re General Motor Cab Co* (1913) 1 Ch 337 *Hindusthan Commercial Bank* v *Hindusthan General Electric Corporation Ltd*, 64 C. W N 458 (1960) 30 Com Cas 367 1960 Cal 637

3 43 C W N 205 1938 P C 284

4 *Re Skinner* (1958) 3 All E R 273 *see* also *Nokes* v *Doncaster Amalgamated Collieries Ltd* (1940) 3 All E R 549 *Re L Hotel Co Ltd*, (1946) 1 All E. R. 319

approve [1] The Court sanctions the scheme which is fair and reasonable and is made in good faith and if it could reasonably be supported by sensible people to be for the benefit of each class of the members or creditors concerned [2] The scheme must be within the powers of the company and not *ultra vires* If it is beyond the company's object or powers, the court will have no jurisdiction to sanction it [3]

The effect of a scheme either under the Companies Act or under the Insurance Act is "to supply by recourse to the procedure thereby prescribed, the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it validity "[4]

6 **Appeal sub-section (2)** —Sub-section (2) of this section has conferred a right of appeal on any shareholder or other person aggrieved to prefer an appeal from the decision of the officer appointed by the Central Government when the latter sanctions the scheme in terms of sub-section (1) to the High Court of the State where the registered office of the company is situate Such appeal has to be preferred within ninety days of the date of the order sanctioning the scheme The appeal will lie for the purpose of modifying or correcting any such scheme

7 **Finality of the decision sub-section (3)** —Sub-section (3) of this section has expressly provided that the decision of the High Court in the case of appeal or the decision of the officer where no appeal is preferred shall be final and binding on all the shareholders and other persons concerned

Conversion of company limited by shares into company limited by guarantee

6C (1) Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association in so far as it may be necessary for this purpose

(2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—

(*a*) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid up capital of the company,

(*b*) that the consent of the creditors to the conversion of the company limited by shares into a company limited

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1 *Re Dorman Long & Co* (1934) Ch 635 657

2 *In re Alabama New Orleans etc Rly Co* (1891) 1 Ch 213 *In re English Scottish & Australian Chartered Bank* (1893) 3 Ch 385 *see also In re Hindusthan General Electric Corporation Ltd* 1959 Cal 679 *Anand Prasad v Ajay Prasad* 1959 Pat 293 *Adam Jute Mill Co Ltd v Rivers Steam Navigation Co*, 100 C L J 70 ; *In re Southern Automotive Corporation Private Ltd* (1960) 1 M L J 230 1960 Comp Cas 119

3 *Re Oceanic Steam Navigation Co* (1939) 1 Ch 41 (1938) 3 All E R 710 *Re Stephens Walters & Sons* (1926) W N 23 *Re Cooper Cooper v Johnson* (1902) W N 199

4 *Re Guardian Assurance Co* (1917) 1 Ch 431 441 per Younger J

by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned

(3) Against the decision of the Central Government sanctioning a scheme under sub-section (2), any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate

(4) The decision of the High Court where an appeal has been preferred to it under sub-section (3) or of the Central Government where no such appeal has been preferred, shall be final and binding on all the persons concerned

(5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of Companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913 (VII of 1913), relating to companies limited by guarantee shall become applicable to the company

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *"Special resolution," its nature*
4 *"Company limited by guarantee," its characteristics of*
5 *"Alteration of the memorandum or articles of association"*
6 *Powers and duties of the Central Government, sub-section (2)*
7 *Appeal to the High Court, sub-section (3)*
8 *Finality of the order of sanction, sub-section (4)*
9 *Company to file certified copy of the sanctioned scheme with Registrar, sub-section (5)*

1 Legislative changes —Section 6C has been inserted by Act XLVII of 1950 like the foregoing sections 6A and 6B

2 Object and scope —The object of the section is to lay down the procedure by which a public company limited by shares and carrying on life insurance business can convert itself into a company limited by guarantee, *i e*, a mutual company A conversion of a public company limited by shares into a company limited by guarantee involves a change of status and consequently it also necessitates changes in the memorandum of association of the company Section 17 of the Companies Act, 1956, prescribes *inter alia* that a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company for the purposes mentioned in cls (*a*) to (*g*) of sub-section (1) of that section and such special resolution in that it may be effective shall have to be confirmed by the court on

Section 18 of the same Act also provides that a certified copy of the order of the court confirming the alteration together with a printed copy of the memorandum as altered shall be filed with the Registrar within three months, or within extended period granted by the court from the date of the order Section 19 of the said Act provides that all proceedings in connection with the alteration of memorandum of association shall become void and inoperative if the alterations are not registered with the Registrar as aforesaid within the said period

What this section provides is that a company limited by shares and carrying on life insurance business if desirous of converting it into a company limited by guarantee must pass a special resolution of the company to that effect and must apply to the Central Government with a scheme for putting the special resolution into effect *i e*, either to approve or sanction same including the obvious alterations involved in the memorandum or articles of association On a sanction being accorded to the scheme by the Central Government and on filing a certified copy of the said sanctioned scheme with the Registrar of Companies that the provisions relating to companies limited by guarantee shall become applicable to the company, that is to say, the company limited by shares will then be considered as a company limited by guarantee and can function as such, until the filing of the certified copy of the sanctioned scheme with the Registrar is done the conversion of the company is not complete The approval or sanction of the special resolution by the court as provided in the Companies Act for alteration of memorandum of association has been dispensed with in case of a public company carrying on life insurance business But a right of appeal has been conferred on the person aggrieved by the order of the Central Government in sub-section (3) of this section The aggrieved person has the right to prefer such appeal to the High Court within whose jurisdiction the registered office of the insurer is situate and within the period of limitation provided in the said sub-section

Company limited by shares into company limited by guarantee and *vice versa* and a company limited by guarantee and not having a share capital into a company limited by guarantee and having a share capital and *vice versa* can be under the English Companies Act, 1948 carried out by re-registration of the company[1] On re-registration a company does not lose its former legal personality and does not acquire a new one but that, on the contrary its former legal personality is continued No transfer of property from the old to the new company is required and legal proceedings by or against the company may be continued "[2]

3 **"Special resolution" its nature** —A resolution may be defined to be the decision of the company arrived at meetings of its members Sometimes a resolution is termed as 'motion' or "proposal The common types of resolutions are (*i*) ordinary resolutions (*ii*) extraordinary resolutions (*iii*) special resolutions (*iv*) resolutions requiring special notice, and (*v*) resolutions requiring a specific majority Under the Companies Act 1956 there are mainly two types of resolutions viz (*i*) ordinary and (*ii*) special The extraordinary resolutions have been dispensed with under the said Act The reasons are given by the Company Law Committee thus 'In our view, company meetings will be rendered much simpler by the abolition of extraordinary resolutions, and their replacement by special resolutions except where we have recommended an ordinary resolution wherever the present Act provides for the former Also in view of the fact that a uniform notice period of 21 days has been

1 Sec. 16 of the Indian Companies Act, 1913. 2 Palmer's Company Law, 20th Edn. p. 51

recommended for all resolutions, there is no purpose now in providing for extraordinary resolutions "[1]

Under the Companies Act, 1956, a resolution shall be a special resolution when (*a*) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution, (*b*) the notice required under the Act has been duly given of the general meeting, and (*c*) the votes cast in favour of the resolution (whether on a show of hands, or on a poll, as the case may be) by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy, are not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting [2]

Palmer in his Company Law observed as follows "A special resolution is a most useful part of the mechanism of a company It is by and through the instrumentality of such a 'special resolution' that many of the most important things which a company is, by the Companies Acts, empowered to do are ordained to be done In defining the requisite steps for such a resolution, the aim of the Legislature seems to have been to secure that every important change shall be made only after due deliberation, and with the sanction, active or passive, express or tacit, of the greater body of the shareholders of the company" (p 484) The notice required under the Companies Act, 1956, of a general meeting of the company should be not less than 21 days' notice in writing [3] In calculating 21 clear days, the date on which the notice is served and the date of the meeting should be excluded [4]

4 **"Company limited by guarantee," charcteristics of —**A company limited by guarantee is a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up [5] The memorandum of such a company must *inter alia* provide that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount [6]

A company limited by guarantee or a guarantee company has two features in common with the company limited by shares or the share company In both cases—

(1) the company has legal personality, and

(2) the liability of the members is limited, in the case of the share company by the nominal amount of the shares held by each member, and in the case of the guarantee company by the amount of the guarantee undertaken by the member

In law the distinction between these two types of companies is that in the share company the liability of the member may have to be implemented at any time during the existence of the company, *i e*, during

1 *See* Report para 78
2 S 189 ( ) Companies Act 1956
3 S 171 (1) Companies Act 1956
4 *Nagappa Chettiar v Madras Race Club* I L R (1949) Mad 808 (1949) 1 M L J 662.
5 S 12 (2) (*b*) Companies Act 1956
6 S 13 (3) Companies Act 1956

its active life as well as during the winding up, whereas in the guarantee company that liability need only be implemented after the commencement of the winding up of the company, and even then only in certain conditions.[1] Another feature marked in this type of company is that it does not derive its working funds from its members Such funds are obtained from sources, such as, endowments, fees, charges, donations or subscriptions This type of corporate organisation, although unsuitable for ordinary business purposes has been availed of by very many numbers of associations, such as, trade associations, research associations, professional associations, mutual insurance etc In view of the rigour of the Insurance Act, 1938, on the public companies limited by shares and carrying on insurance business it is obvious that many such companies doing small insurance business would be tempted to convert themselves into mutual companies as the rigour of the said Act has in many respects been lessened with respect to mutual insurance companies in Part IV of the same Act

5 **Alteration of the memorandum or articles of association** —It is obvious that for the conversion of a share company into a guarantee company its memorandum and articles of association requires alterations and the provisions applicable to a guarantee company should be incorporated altering the provisions applicable to a share company It has already been said that a company may, by special resolution, alter the provisions of the memorandum and such alteration has got to be confirmed by the court on petition.[2] An alteration in the articles of association may also be made by special resolution and such alteration need not be confirmed by the court as is required in the case of memorandum But if the alteration in the articles has the effect of converting a public company into a private company such alteration has to be approved by the Central Government and unless such approval is obtained such alteration will have no effect [3]

There are certain provisions of memorandum which may be altered without reference to court They are—

(i) change of name of the company as provided in section 21 of the Companies Act but in such a case the approval of the Central Government in writing is required ,

(ii) alteration necessary in inserting the provisions of sub-section (3) of section 15 of the Act for converting a share company to a guarantee company,

(iii) alteration of the company's share capital as provided in section 91 of the Act which includes (*a*) increase of capital, (*b*) cancellation of shares not taken by any person, (*c*) conversion of shares into stock and *vice versa* (*d*) consolidation of shares, and (*e*) sub-division of shares, and

(iv) alteration to make the liability of directors, managing agents secretaries and treasurer or manager, unlimited as provided in section 323 of the Act

A memorandum of association of a company is its charter It defines the objects of its existence and operations It has been said that the memorandum is the area beyond which a company cannot travel [4] But a mere

1 Palmer's Company Law 21st ed. p. 21
2 See Section 17
3 See Section 43 of the Act
4 Ashbury Rly Carriage Co v Riche (1875) LR 7 HL 653

randum of association like any other document must be read fairly and its import derived from a reasonable interpretation of the language it employs [1] The power of alteration of the articles of association must be exercised *bona fide* and for the benefit of the company as a whole The articles cannot be so altered as to deprive a minority of their rights [2]

6 **Powers and duties of the Central Government, sub-section** (2) —Sub-section (2) of this section empowers the Central Government to sanction the scheme submitted to it for the purpose of converting itself into a guarantee company from a company limited by shares But the powers conferred on it are discretionary It will sanction such scheme when it is satisfied that all the requirements laid down in clauses (*a*) to (*c*) are fulfilled, otherwise it has the power to refuse such sanction

Before sanctioning the scheme the Central Government has certain duties It has the discretion to give notice to any person concerned as it will appear to it to give notice It will then have to be satisfied with regard to the following

(*i*) that in the scheme suitable provisions have been made for the repayment, conversion or liquidation of the paid-up capital of the company ,

(*ii*) that for such conversion from the share company to the guarantee company, the consent of the creditors of the share company has been obtained if not that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(*iii*) that it will appear to it that the scheme is otherwise reasonable [3]

7 **Appeal to the High Court sub section** (3) —A right of appeal has been provided in sub-section (3) of this section Any person aggrieved by the decision of the Central Government sanctioning a scheme can prefer an appeal from that decision within ninety days of the date of such order to the High Court of the State where the registered office of the insurance company is situate The appellate decision has been made final by sub section (4) of the section

8 **Finality of the order of sanction, sub-section** (4) —The appellate order of the High Court under sub-section (3) or when no appeal is preferred as provided in sub-section (3), the order of the Central Government in sanctioning the scheme under sub-section (2) has been made final under sub-section (4) of this section The order when it becomes final shall be binding on all the persons concerned

9 **Company to file certified copy of the sanctioned scheme with Registrar, sub section** (5) —Sub-section (5) of this section makes it obligatory on the company to file a certified copy of the scheme as sanctioned by the Central Government or, as affirmed in appeal by the High Court with the

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1 *Egyptian Salt & Soda Co* v *Port Said Salt Association* 1931 A C 677 1931 P C 182 62 M L J 163 *Deuchar* v *Gas Light & Coal Co* (1925) A C 691

2 *Allen* v *Gold Reefs of West Africa* (1900) 1 Ch 656 , *Shuttleworth* v *Cox Bros & Co* (1927) 2 K B 9 *Greenhalgh* v *Arderne Cinemas* (1950) 2 All E R 1120 *see* also Buckley Companies Act 12th Ed pp 37—39 Palmer's Company Law 29th Edn pp 87-90 107 108 and 116—119 (For memorandum of association of a guarantee company see p 278 and for its articles of association , see pp 649-664 of Palmer's Company Precedents 17th Edn. Part I)

3 *See* also Note 5 under section 64-165

Registrar of Companies, and on such filing the provisions of the Companies Act as applicable to companies limited by guarantee shall become applicable to the company intended to be converted Unless the filing is done as required under this section the company will not be treated as one limited by guarantee even though its conversion has been sanctioned by the Central Government

Under section 18 of the Companies Act, 1956, the company is required to file with the Registrar a certified copy of the order of the court confirming the alteration together with a printed copy of the memorandum as altered within three months from the date of the order The effect of failure to file the same, as provided in section 19 of the same Act, is that all proceedings connected with the alteration and the order of the court shall, at the expiry of the said period, become void and inoperative But powers have been conferred on the court to revive the order on application if made within a further period of one month The court has also been empowered to extend the time for the filing of the documents required to be filed under section 18 of the Act In the instant sub-section no time-limit has been prescribed for the filing of the scheme

Deposits

7 (1) Every insurer not being an insurer specified in sub-clause (c) of clause (9) of section 2 shall, in respect of the insurance business carried on by him in India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated

(a) where the business done or to be done is life insurance only, two hundred thousand rupees ,

(b) where the business done or to be done is fire insurance only, one hundred and fifty thousand rupees ,

(c) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees,

(d) where the business done or to be done is miscellaneous insurance only, one hundred and fifty thousand rupees,

(e) where the business done or to be done is life insurance and any one of the three classes specified in clauses (b), (c) and (d), three hundred thousand rupees, of which two hundred thousand rupees shall be the deposit for life insurance business ;

(f) where the business done or to be done is life insurance and any two of the three classes specified in clauses (b), (c) and (d), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(g) where the business done or to be done is life insurance and all three classes specified in clauses (b), (c) and (d), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business ,

(h) where the business done or to be done does not include life insurance but is any two of the classes specified in clauses (b), (c) and (d), two hundred and fifty thousand rupees ,

(i) where the business done or to be done does not include life insurance but is all the three classes specified in clauses (b), (c) and (d), three hundred and fifty thousand rupees ,

* * *

Provided that, where the business done or to be done is marine insurance only and relates exclusively to the country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.

(2) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposit, if in respect of any class of insurance business carried on by him in India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2, a deposit of an amount one and a half times that specified in sub-section (1) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyds with whom he has his standing contract

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in India before the 27th day of January, 1937, the deposit referred to in sub-section (1) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before the expiry of four months from the commencement of the Act, and the subsequent instalments be of not less than the minimum amount required as the instalment and shall be paid before the 1st day of January of succeeding year

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before the expiry of four months from the commencement of this Act, and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of the each succeeding year

(4) Notwithstanding anything contained in sub-section (3), in the case of an insurer to whom that sub section applies not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, the deposit referred to in sub-section (1) shall be made in two instalments of which the first shall be not less than one half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration

(5) Where the deposit is to be made by an insurer neither incorporated before nor carrying on insurance business in India before the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth of the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of business in India and not less than one-half the residue before the expiry of two years from the commencement of business in India and the balance before the expiry of three years from the commencement of business in India

Provided that in the case of any insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, the deposit shall be made in full before the application for registration is made

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a deposit under sub-section (1) or sub-section (2) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) is to be made before the application for registration has also been made in full

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Insurance Companies Act, 1912, shall be transferred by him to the Reserve Bank

of India and shall, to the extent of their market value as at the date of the commencement of this Act, b deemed to be deposited under this Act as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall, except to the extent, if any, to which the cash has been invested in securities under sub-section (9A), be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned, and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to deduction of the normal commission chargeable for the realization of interest

(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or

such cash together with such value, as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited

(9A) The Reserve Bank of India shall, if so requested by the insurer,—

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest in approved securities specified by the insurer, the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit and may charge the normal commission on such sale or on such investment

(9B) Where sub-section (9A) applies—

(a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited

with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940, and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits, and

(*b*) if the cash realized by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities as will make up the amount so used The insurer shall be deemed to have failed to comply with the requirements of sub-section (1) unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Amount to be deposited, sub-section (1)*
(i) *Who will make the deposit ?*
(ii) *With whom the deposit has to be made*
(iii) *Manner of making the deposit*
4 *Deposit in case of any person having standing contract with underwriters who are members of Lloyd's, sub-section (2)*
5 *Deposit required of an insurer incorporated or carrying on business in India before 27th January 1937, sub-section (3) Payment by instalments*
(i) *Insurer carrying on a combined business but discontinuance of other kind and continuance of life insurance business, re-adjustment of instalments whether permissible, Proviso to sub-section (3)*
(ii) *Instalments if can be divided in case of combined business*
6 *Deposit in respect of foreign insurers, payment by instalments, sub-section (4)*
7 *Insurer incorporated or carrying on business after 27th January, 1937 provision for instalments, sub-section (5)*
8 *When insurance business to be wound taken sub-section (6)*

9 *Securities deposited under the Indian Life Assurance Companies Act, 1912, availability of under the Insurance Act, 1938, sub-section (7)*
10 *Cash deposits, its incidents, sub-section (8)*
11 *Replacement of securities, how to be made, sub-section (9)*
12 *Function of Reserve Bank vis-a-vis insurer, sub-sections (9A) and (9B)*
(i) *Appreciation and depreciation in value of securities*
(ii) *Where sub section (9A) applies*
11 *Additional sum or securities deposit of, and its failure, effect of sub-section (10)*

1 **Legislative changes**—(*a*) The word "India" occurring in the section has been substituted by Act LXII of 1956

(*b*) The words "the amount hereafter specified so estimated" in sub-section (1) have been substituted with retrospective effect for the words "cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified, namely" by Act XX of 1940

(*c*) The words "in miscellaneous insurance only in clause (*a*) of sub-section (1) have been substituted for the words "in accident and miscellaneous insurance including workmen's compensation and motor car insurance with retrospective effect by Act XX of 1940

(*d*) The words "that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (*a*) (*b*) or (*c*)" occurring after 'insurance' in clause (*d*) of sub-section (1) have been omitted by Act XLVII of 1950

(*e*) The word "is" occurring in clauses (*e*) to (*i*) of sub-section (1) has been substituted for the word "includes", by Act XX of 1940

(*f*) Proviso at the end of sub-section (1) was added by Act XX of 1940

(*g*) The words "carried on" occurring in sub-section (2) have been substituted for the word "transacted" by Act XI 1939

(*h*) The words "the expiry of four months from the commencement of this Act" occurring in sub-section (3) have been substituted for the words and figures 'the 1st day of January, 1939" by Act XI of 1939

(*i*) The words "to whom that sub-section applies" occurring in sub-section (4) were inserted by Act XI of 1939

(*j*) The words "and not being an insurer incorporated in or domiciled in the United Kingdom" after the word and figure "section 2" in sub-section (4) were omitted by Act XLVII of 1950

(*k*) The words 'as at the date of the commencement of this Act" in sub-section (7) have been substituted for the words "on the day of the first deposit made in compliance with this Act with retrospective effect by Act XX of 1940 and the words "as the instalment or a part of the instalment in fact made" in sub-section (7) have been substituted with retrospective effect for the words in respect of the life insurance business of the insurer" by Act XX of 1940

(*l*) The words 'except to the extent sub-section (9A)' in sub-section (8) were inserted by Act XX of 1940

(*m*) Sub-sections (9), (9A) and (9B) were substituted for the original sub-section (9) with retrospective effect by Act XX of 1940

(n) The words "and may charge ... such investment" in clause (b) of sub-section (9A) were added by Act XIII of 1941

2 **Object and scope**—The object of this section is twofold Firstly, by providing for deposits it ensures the stability of insurance companies carrying on insurance business in India so that the interests of the policy holders may not be jeopardised in any way when the policy matures itself into claim Secondly, it prevents the mushroom growth of companies engaging in such business in India lacking the financial resources necessary to carry on insurance business safely, although under the Companies Act these companies cannot be prevented from being incorporated as such The deposits made in respect of different classes of insurance business are also available to meet the claims of policy holders of the class in question in the event of the company being wound up[1] The rapid growth in the number of companies carrying on different kinds of insurance business in India during a considerable number of years, the accumulation of the immense funds which they control and the constant extension of their business to new classes of risks has made the provisions of deposits in different kinds of insurance business imperative

Deposits are required to be made in every class of insurance business namely, life, fire, marine and miscellaneous insurance business or any combination of one or more of such businesses The amount of deposit varies from one business to another, the maximum being provided for the life insurance business and the minimum in respect of marine insurance relating to country craft or its cargo or both Insurers having standing contract with Lloyd's underwriters have been dealt with separately in sub-section (2) For convenience of payment and also to avoid hardship in making the whole deposit at a time, suitable instalments for such payments have been made in sub-sections (3) (4) and (5)

A distinction has been made between (i) companies carrying on life insurance business and companies doing other kinds of insurance business, (ii) Indian and foreign companies, and (iii) companies already carrying on insurance business before 27th January, 1937 and companies commencing insurance business after the said date

In England, every insurance company or insurer was required to make and keep a deposit of £20,000 with the Paymaster-General for and on behalf of the Supreme Court in respect of each of the several classes of assurance business to which the Assurance Companies Act, 1909, applied But no company was required to make a deposit in respect of fire, accident or bond investment business where such business had been established in the United Kingdom before 3rd December 1909 or in respect of employer's liability business where such business had been established before 28th August, 1907 Since the passing of the Act of 1946 no assurance company has been required to deposit any sum except in cases of mutual associations and collecting societies in which a deposit is still required in accordance with the provisions of the Second Schedule of that Act The Assurance Companies Act, 1946, substituted for the deposit system the principle of margin of solvency, *i e*, any company carrying on general insurance business covered by the Acts must always operate with a minimum margin of solvency and this scheme is retained in the Insurance

1 *Re Nelson* (1906) 22 T L R 406 see also *Re South East Lancashire Insurance* (1935) 1 Ch 225 where a deposit of £15 000 in Motor Insurance business was considered by the Court of Appeal in the winding up of the company under section 42 of the Road Traffic Act, 1930 now replaced by Road Traffic Act 1960 (8 & 9 Eliz 2, Ch 16)

Companies Act, 1958 (6 & 7 Eliz 2, C 72) Prescribed margin of solvency means that the value of the company's assets must exceed the amount of its liabilities by whichever is the greater of the following amounts, namely—(*a*) £50,000, or (*b*) one-tenth of the general premium income of the company in its last preceding financial year The failure to maintain such margin of solvency will be construed as if the company is unable to pay its debts and hence provisions of the Companies Act, 1948, relating to winding up will apply accordingly But the Board of Trade has been empowered to exempt any company from the margin of solvency provisions being applied to it.

Deposits required to be made under this section may be made either in cash or approved securities or partly in one and partly in another When the securities are deposited their value is determined at the market value of the securities on the day of deposit Securities already deposited with the Controller of Currency under the Indian Life Assurance Companies Act, 1912, should be transferred to the Reserve Bank and their market value is determined according to their value as at the commencement of the Insurance Act, 1938

3 **Amount to be deposited, sub section (1)** —The amount to be deposited under sub-section (1) of this section is not a fixed amount for all classes of insurance business but it varies from one class to another and their combination The amount also increases when the businesses undertaken are two or more of them The amounts to be deposited as prescribed under this sub-section in respect of each class of insurance business or any combination thereof are as follows

(*a*) Where the business is life insurance only, Rs 2,00,000,

(*b*) Where the business is fire insurance only, Rs 1,50,000,

(*c*) Where the business is marine insurance only, Rs. 1,50,000, except where it relates to country craft or its cargo or both, the amount to be deposited is Rs 10,000,

(*d*) Where the business is miscellaneous insurance business, that is which is not principally or wholly of fire insurance, life insurance and marine insurance, the deposit required to be made is Rs 1,50,000;

(*e*) Where the business is life insurance business and any one of three classes, *viz*, fire, marine and miscellaneous, the deposits required to be made are Rs 3,00,000 of which Rs 2,00,000 will be earmarked for life insurance business;

(*f*) Where the business is life insurance business and any two of three classes, *viz*, fire, marine and miscellaneous, the deposits required to be made are Rs. 4,00,000, of which Rs 2,00,000 earmarked for life insurance business,

(*g*) Where the business is life insurance business and all the three *viz*, fire marine and miscellaneous, the deposits required Rs 4,50,000, of which Rs. 2,00,000 will be likewise earmarked for life insurance business,

(*h*) Where the businesses are (*a*) fire, and marine or (*b*) fire and miscellaneous or (*c*) marine and miscellaneous, the deposits required to be made are Rs. 2,50,000,

(*i*) Where the businesses are fire, marine and miscellaneous the deposits required under this sub-section are Rs. 3,50,000

When the business is carried on singly, the amount in respect of each class of insurance is a fixed amount of Rs 2,00,000 in case of life insurance and Rs 1,50,000 in case of other classes, *viz*, fire, marine or miscellaneous The concession in the amount of deposit has been made in other classes of insurance business, such as fire, marine and miscellaneous, when such business is carried on in combination with one or more of these classes and even with life insurance business but no such concessions in the amount of deposit has been made in respect of life insurance business when the same is carried on in combination with any of the three classes mentioned above, the deposit of the amount of Rs 2,00 000 has been kept constant in all cases, whether the business is carried on singly or in combination with other classes

(i) *Who will make the deposit* —The deposits as aforesaid have to be made by every insurer except an insurer who in India has a standing contract with underwriters who are members of the Society of Lloyd s as defined in clause (*c*) of sub section (8) of section 2 of the Act The deposit to be made by such an insurer is governed by sub-section (2) of this section This sub-section does not make any distinction with regard to the amount of deposit to be deposited in respect of Indian and foreign insurance companies The provisions of this sub-section will at once be attracted when an insurer as enumerated in this sub-section carries on an insurance business in India

(ii) *With whom the deposit has to be made* —The deposit required under this section has to be made and the same has to be kept deposited with the Reserve Bank of India in one of the offices in India of the Bank The amount will be deposited for and on behalf of the Central Government

(iii) *Manner of making the deposit* —The amount of deposit required to be made under this sub-section may be made (*a*) in cash or (*b*) in approved securities as defined in sub-section (3) of section 2 of the Act, the value of such securities is estimated at their market value on the day of deposit, or (*c*) partly in cash and partly in approved securities so estimated

Deposits shall be sent by the depositor with a covering letter to the Manager of the Reserve Bank and the securities shall be duly transferred to the said Bank but deposits in sterling securities shall be sent by the depositor with a covering letter to the Manager of the London Office of the Reserve Bank and shall not be brought on the books of the appropriate Indian Office until the receipt of an intimation in prescribed form from the London Office [1]

Under the English Act where a deposit is required it is made either by the company or by its subscribers of the memorandum of association where the company is in process of making An application to the Board of Trade specifying the particular class of assurance business in respect of which the deposit is being made is to be made by the depositors for a warrant authorising them to make the deposit This warrant authorises the depositors to lodge the money at the Bank of England to the account of the Accountant General for and on behalf of the court to be placed in the books of the Accountant-General to the credit *ex parte* of the company [2]

4 Deposit in case of any person having a standing contract with underwriters who are members of the Society of Lloyd's, sub-section (2) —Sub-section (2) of this section also relates to deposit to be made with any

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1 *See* R 5 of the Insurance Rules, 1939

2. *See* MacGillivray Insurance Law 5th Edn. p 51

office of the Reserve Bank of India for and on behalf of the Central Government just as the deposits in sub-section (1) but the deposit under this sub section relates to any person being an insurer who in India has a standing contract with underwriters who are members of the Society of Lloyd's as defined in clause (*c*) of sub-section (9) of section 2 of the Act Such an insurer is required to make a deposit of an amount one and a half times that specified in sub-section (1) of that class of insurance business carried on by him in India under a standing contract of the nature referred to in the said sub-clause (*c*), that is, whereby such person is authorised within the terms of such contract to issue protection notes, cover notes, or other documents granting insurance cover to others on behalf of the underwriters The deposit can be made by the person himself or it may be deposited on behalf of the underwriters who are members of the Society of Lloyd's Thus, a person carrying on marine insurance business in India is required to make a deposit under this sub-section the amount of Rs 2,25,000, when carrying on both marine and fire, he will be required to make a deposit of Rs 3,75,000 and so on

5 **Deposit required of an insurer incorporated or carrying on insurance business in India before 27th January, 1937, sub-section (3)** — Sub-section (3) of this section deals with the deposit of those companies who were incorporated before 27th January, 1937 or carrying on insurance business before that date Facilities to these companies or insurers doing insurance business other than life insurance have been given to deposit the amount required to be deposited under sub-section (1) of the section in not more than seven instalments and in case of insurers doing life insurance business facilities of depositing the required deposit have been given in not more than ten instalments Seven instalments in case of insurance business other than life insurance and their payments will comprise, and have to be made, as follows

(*a*) first instalment shall not be less than one-fourth of the total amount of the deposit, *i e*, in case of fire, marine or miscellaneous insurance, 1st instalment to be deposited is Rs 1,50,000 × 1/4 = Rs 37,500, which has to be paid before the application for registration is made ,,

(*b*) second instalment shall be not less than one-sixth of the balance of the deposits, *i e*, (1,50,000 — 37,500) × 1/6 = Rs 18,760 which has to be made before the expiry of four months from the commencement of the Act, that is to say, 1st July, 1939

(*c*) third instalment shall not be less than Rs 18,760 and it shall be paid before the 1st day of January, 1940

(*d*) fourth and subsequent instalments shall also be not less than the said sum of Rs 18,760 which has to be paid before the 1st day of January of each succeeding year

Ten instalments in case of life insurance business only, and their payments, will comprise, and have to be made, as follows

(*a*) first instalment shall not be less than one-fourth of the total amount of the deposit, *i e*, Rs 2 00,000 × 1/4 = Rs 50,000, which has to be paid before the application for registration is made

(*b*) second instalment shall not be less than one-ninth of the balance of the deposit, *i e*, (Rs 2,00,000 — 50 000) × 1/9 = Rs 16,666-10-8 which has to be paid before the expiry of four months from the commencement of the Insurance Act, 1938, *i e*, 1st July, 1939

(*c*) third instalment shall not be less than Rs, 16,666-10-3 and it shall be paid before the 1st day January, 1940

(*d*) fourth and subsequent instalments shall also be not less than the said sum of Rs 16,666-10-8 which has to be paid before the 1st day of January of each succeeding year

(*i*) *Insurer carrying on a combined business but discontinuance of other kind and continuance of life insurance business, re-adjustment of instalment, whether permissible—Proviso to sub-section* (3) —In the case of insurers carrying on life insurance business only the deposit required to be made under sub-section (1) of this section can be made in ten instalments according to proviso to sub-section (3) of this section But the proviso applies only to insurers who were dealing exclusively in life insurance business at the time when the application for registration was made The proviso does not apply to insurers who were carrying on a combined business at the time of the application for registration, but subsequently discontinued the other business and came to carry on life insurance business only Hence in the case of such an insurer, the instalments prescribed by sub-section (3) of this section cannot be re-adjusted after he has stopped the other miscellaneous business After such discontinuance, he cannot claim the benefit of the proviso on the ground that he is an insurer carrying on life insurance business only from the beginning [1]

(*ii*) *Instalments if can be divided in case of combined business* —As the entire deposit of rupees three lakhs as required under sub section (1) of this section, is to be divided into two parts, the instalments permitted under this sub-section, *i e*, sub-section (3), are susceptible of similar division and it would be quite proper to allocate one third of such instalments to the miscellaneous insurance business and the remaining two-thirds to the life insurance Clause (*e*) of sub-section (1) of this section does not mean that unless the full amount of rupees three lakhs is deposited by the insurer no allocation or apportionment of the amount is possible and no particular portion of it can be set apart or earmarked for the life insurance business [2]

6 **Deposit in respect of foreign insurers, payment by instalments, sub section** (4) —Deposits required to be made under sub-section (1) of this section applies to every insurer except one having a standing contract in India with underwriters who are members of the Society of Lloyd's that is, foreign companies carrying on any insurance business in India also come within the mischief of sub-section (1) They also suffer from other disadvantages, namely, that to them the provisions of sub-section (3) providing facilities of 7 instalments in case of insurance business other than life insurance and 10 instalments in case of the latter, do not apply They cannot deposit the required amount of deposit in 7 or 10 instalments, as the case may be But under this sub-section they have been given the facility of depositing the required amount under sub-section (1) by two instalments The instalments are equally divided and the first of such instalment has to be paid before the application for registration is made and the second or the final instalment of the same amount has to be paid before the expiry of one year from the date of registration

7 **Insurers incorporated or carrying on business after 27th day of January 1937, provisions for instalments sub-section 5** —Where the deposit is to be made by an insurer neither incorporated before nor carrying

1 *Nanajiban Insurance Co Ltd v Superintendent of Insurance* I L R (1913) 1 Cal 410 : 47 C W N 312 : 77 C L J 88 : 207 I C 97 : 1913 Cal 203

2 *Nanajiban Insurance Co Ltd v Superintendent of Insurance* I L R (1942) 1 Cal 41 : 46 C W N 281 : 74 C L J 491 : I C 20 : 1942 Cal 291

on business in India before the 27th day of January, 1937, sub-section (5) of this section provides that the deposit may be made in instalments as follows

(*a*) first instalment shall not be less than one-fourth the total amount, *i e*, in case of fire, marine or miscellaneous insurance, the amount will be Rs 1,50,000×1/4=Rs 37,500 which has to be paid before the application for registration is made, in case of life insurance the amount would be Rs 2,00,000×1/4=Rs 50,000,

(*b*) second instalment shall not be less than one-third the balance, *i e* Rs (1,50,000—37,500)×1/3=Rs 37,500 in case of fire, marine or miscellaneous insurance and Rs (2,00,000—50,000)×1/3= Rs 50,000 in case of life insurance, which amount has to be deposited before the expiry of one year from the date of commencement of business in India,

(*c*) third instalment shall not be less than one-half the residue, *i e* Rs (1,50,000—75,000)×1/2=Rs 37,500 in case of fire, marine or miscellaneous insurance and Rs (2,00,000—1,00,000)×1/2= Rs 50,000, which amount has to be deposited before the expiry of two years from the date of the commencement of business in India,

(*d*) fourth or the final instalment, *viz*, the balance remaining unpaid, *i e* Rs (1,50,000—1,12,500)=Rs 37,500 in case of fire, marine or miscellaneous insurance and Rs (2,00,000—1,50,000)=Rs 50,000, shall be deposited before the expiry of three years from the commencement of business in India

But the proviso to this sub-section makes it compulsory to deposit the amount in full before the application for registration is made in the case of any insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause 9 of section 2 of the Act

8 **When insurance business to be undertaken, sub section (6) —** Sub-section (6) of this section provides that no insurer should undertake to carry on any class of insurance business in addition to the class or classes in respect of which he is already liable to make a deposit under sub-section (1) or sub-section (2) until the deposit to which he is already liable has been made in full Thus, an insurer carrying on life insurance business decides to carry on also the business of fire or marine or miscellaneous insurance, he cannot carry on the latter class of insurance business unless he deposits in respect of the life insurance the full amount of deposit required under sub-section (1), and also the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) in full before he makes an application for registration of that class of insurance business

Illustrations

(*a*) An insurer carrying on life insurance business before 27th January, 1937, decides to carry on fire, marine or miscellaneous insurance business, that is, any of those classes with life insurance To entitle him to carry on any other class of insurance business with the life insurance, he must make a full deposit of Rs 2,00,000 required to be deposited under clause (*a*) of sub-section (1) and Rs 37,500 being the first instalment under sub-section (3) to be deposited for any of those classes of the insurance before he applies for registration

(*b*) An insurer carrying on life insurance business after 27th January, 1937, intends also to carry on fire, marine or miscellaneous insurance business along with life insurance To entitle him to so carry on any of the classes of the latter business he must make a full deposit of Rs 2,00,000 as required under clause (*a*) of sub-section (1) and Rs 37,500 being the first instalment required under sub-section (5)

(*c*) A foreign company carrying on life insurance business decides to carry on fire, marine or miscellaneous business along with the life insurance To entitle it to do so it must make a full deposit of Rs 2,00,000 required to be deposited under clause (*a*) of sub-section (1) and Rs 75,000 being the first instalment required under sub-section (4)

In each case subsequent deposits may be made by instalments provided respectively in sub-sections (3), (4) and (5) of this section as the case may be While enacting sub-section (6) the Select Committee observed as follows

"Provisions as to payments by instalments apply to additional deposits required under this sub-clause"

9 **Securities deposited under the Indian Life Assurance Companies Act (V of 1912) availability of, under the Insurance Act, 1938, sub section (7)** —Sub section (7) of this section is simply a general provision to make available the securities already deposited under the Indian Life Assurance Companies Act, 1912, for the purpose of being used as deposits under the Insurance Act, 1938 The provision as to valuation of the securities is purely a question of machinery Cancellation of a certificate of registration can only take place if the provisions of sub-section (3) of this section are not complied with [1] The doubt if there were any regarding instalment has been set at rest by the insertion of the words "as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such application is or is not in fact made," by Act XX of 1940

Ordinarily when deposit under this section is made in approved securities their value is determined by their market value on the day when the deposit is made but when securities deposited in compliance with the Indian Life Assurance Companies Act, 1912, are transferred by the Controller of Currency to the Reserve Bank of India, their value is determined by their market value as at the date of the commencement of the Insurance Act, 1938, *i e* 1st July, 1939, irrespective of whether any application for registration under the new Act is or is not in fact made on that date

10 **Cash deposit its incidents sub-section (8)** —Where a deposit as required under sub-section (1) of this section is made in cash, the Reserve Bank of India shall hold the same to the credit of the insurer depositing it When the deposit becomes returnable under any of the provisions of the Insurance Act 1938 it shall be returned in cash But where the cash deposited is inserted in securities under sub-section (9A) it is not returnable

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1 *In re Canara Insurance Co Ltd* I L R (1910) 2 Cal 127 191 I C 374 ; 1940 Cal 529 ; in the same case decided on 9th April 1940 it is to be observed that although there was no specific provision stating that deposits already made and now deemed to be made under the new Act (Insurance Act, 1938) by virtue of S 7 (7) would be appropriated according to the instalments fixed by S 7 (3) it is implied in the words of S 7 (7) themselves deemed to be deposited under this Act"

in cash but any interest accruing due and collected in respect of those securities is payable to the insurer deducting the normal commission chargeable for realization of interest

Under the English Assurance Companies Rules, 1950, when the deposit is made in securities, payment of interest or dividends thereon is made by the Accountant-General to the company in whose name the deposit was made upon a request of the latter, but when the deposit is made in cash the court may, on the application of the company, order payment to it of the interest or dividends on the securities in which the deposit is for the time being invested [1]

11 Replacement of securities, how to be made, sub-section (9) — Securities deposited with the Reserve Bank of India under this section may, at any time, be replaced by the insurer depositing same Such securities may be replaced in any one of the three ways, namely, (*a*) by cash, (*b*) by other approved securities, or (*c*) partly by cash and partly by other approved securities But in replacing the securities it is to be seen that the value of the replaced securities as determined by the market rates prevailing at the time of replacement is not less than the value of the securities replaced determind at the market rates prevailing when they were deposited When such value is less the difference is to be made up in cash or by lodging more securities which will equalise the value

In English law the court has the discretion to sanction a variation of investments in other securities of an equivalent amount but it is not sufficient to order such variation merely on the ground that the securities lodged are equivalent in market value to the securities proposed to be withdrawn unless it can be shown to the satisfaction of the court that it is expedient to do so in the interest of the policy-holders [2]

12 Functions of Reserve Bank vis-a-vis insurer, sub-sections (9A) and (9B) —When requested by the insurer, the Reserve Bank of India shall do any of the following, namely, it shall,—

(*a*) sell any securities and hold the cash realised by such sale as deposit,

(*b*) invest in approved securities specified by the insurer, (*i*) the whole or any part of a deposit held by it in cash, or (*ii*) the whole or any part of cash received by it on sale of securities, or (*iii*) the whole or any part of cash received by it on the maturity of securities deposited by him

(*c*) hold the securities in which investment is so made as deposit

In doing any of the above transactions the Reserve Bank has the discretion to charge the normal commission on such sale or on such investment

(*i*) *Appreciation or depreciation in value of securities* —Once the requisite amount has been deposited in respect any class of insurance business either in cash or in securities or partly in cash and partly in securities, the matter is at an end so far as the insurer's obligation in the matter of making and keeping the requisite deposit is concerned under this section The section does not further require the insurer to make any further deposit in order to make good any subsequent depreciation in the value of the securities deposited or in

1 *See* Assurance Companies Rules 1950 R 4 and S R and O 1931

2 See *Re Scottish Life Assurance Co* (19 Ch 245

which the deposited cash has been invested Similarly, this section does not provide for payment out to the insurer in excess of the requisite amount in the event of the subsequent appreciation in the value of those securities [1]

(ii) *Where sub-section (9A) applies* —But exception has been made in case where sub-section (9A) applies by sub-section (9B) of the section Thus where at the request of the insurer the sale of the securities is made and the cash realised by such sale or on the maturing of the securities falls short of the market value of the securities at the date on which they were deposited with the Reserve Bank, the insurer shall have to make good the deficiency by a further deposit either in cash or in approved securities or partly in one and partly in other within a period of two months from the date on which the securities matured or sold or where the securities matured or were sold before 21st day of March, 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940 His failure to make good the depreciated value of the securities sold or matured within the time specified as above will make his registration under the Act liable to be cancelled as he will be deemed to have failed to comply with the requirements of this section as to deposits Thus in asking the Reserve Bank to do any of the transactions of sale or investment in respect of the securities deposited the insurer must be cautious that he may not be put to the disadvantageous position of being hit by the depreciation in value of the securities to be dealt with by the Reserve Bank at his instance But in such dealings with the Reserve Bank the insurer has the advantages, namely, when the securities deposited appreciate in value Thus if the cash realised by the sale of or on the maturing of the securities exceeds the market value of the securities at the date on which they were deposited with the bank, the latter under the direction of the Central Government will return the excess to the insurer Before the Central Government issues such direction it must be satisfied that the full amount required to be deposited under sub-section (1) is in deposit Normally an insurer is not entitled to the return of the excess occasioned due to the appreciation in value of the securities deposited but when sub-section (9A) applies he obtains the advantages of the appreciation in value of the securities

13 Additional sum or securities, deposit of and its failure, effect of, sub-section (10) —Sub-section (10) of this section prescribes that additional sum in cash or approved securities has to be deposited by the insurer when any part of the deposit made under sub-section (1) is used in the discharge of any of his liability to make up the part so used Such additional deposit to make the deficiency has to be made within a period of two months from the date when the original deposit or any part thereof is so used as above The failure of the insurer to deposit the additional securities within the aforementioned time will render insurer's registration liable to be cancelled on the ground that he has failed to comply with requirements of sub section (1) of this section

Reservation of deposits

8. (1) Any deposit made under section 7 or section 98 shall be deemed to be part of the assets of insurer but shall not be susceptible of any assignment or charge, nor shall it be available for the discharge of any liability of the insurer other than liabilities arising out of policies of insurance issued by the insurer so long as any such liabilities remain undischarged, nor shall it be liable to attachment in execution of

1 See *Re General Accident Fire and Life Insurance Co* (1933) Ch. 349

any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy which debt the policy-holder has failed to realise in any other way

(2) Where a deposit is made in respect of life insurance business, the deposit made in respect thereof shall not be available for the discharge of any liability of the insurer other than liabilities arising out of the policies of life insurance issued by the insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *"Shall be deemed to be part of the assets," sub section* (1)
4 *"Shall not be susceptible of any assignment or charge," sub section* (1)
5 *"Nor shall it be available for the discharge of any liability," sub-section* (1)
6 *"Nor shall it be liable to attachment in execution of any decree," sub-section* (1)
7 *"Which debt the policy-holder has failed to realise in any other way," sub-section* (1)
8 *Deposit in respect of life insurance business, availability of sub-section* (2)

1, Legislative changes —The words "or section 98 ' occurring in sub-section (1) of this section were inserted by Act XI of 1939

2 Object and scope —Although the deposits made in pursuance of section 7 of the Act form a part of the assets of the insurer, they are not such assets as are available to him to meet every contingency arising out of or in course of the insurer's business The object of this section is to circumscribe the limit within which the deposits will be available to meet the insurer's liabilities These deposits are, to all intents and purposes, reserved deposits The purpose of the deposits is for the benefit of the policy holders alone as they are available to meet the claims arising out of policies only and they cannot be used for any other purposes of the insurer so long as any policy-holder s dues remain outstanding These deposits will be available to the insurer like any other assets when there remains no debts or obligations on the policies outstanding Even the contingent liabilities on policies have to be taken into account in determining such debts on policies

A distinction seems to have been made in sub-section (1) and sub-section (2) of this section between insurance businesses other than life insurance and life insurance business itself While in the case of the latter the deposits are available only to meet the liabilities of life policies in the case of the former, such deposits are available to meet the liabilities of any class of policies, whether fire, marine or miscellaneous These provisions differ from the English Act as under the latter Act insurance companies carrying on different classes of insurance business must enter in separate accounts and carry same to separate funds for each class of insurance business and each fund forms a security for the policy-holders in that class as if it belonged to a company which carried on no other business [1]

Sub-section (2) of this section so far as the deposits relate to life insurance business treat such deposits as a separate fund which form a security for the policy-holders in life insurance business only and this provision is in line and accord with the English Act

1 *See* S 3 Insurance Companies Act 1958 6 and 7 Eliz 2 C 72.

3 **"Shall be deemed to be part of the assets," sub-section (1)** — Whenever the word "deemed" is used in statute in relation to a person or thing, it implies that the Legislature after due consideration exercised its judgment in conferring that status or attribute to a person or thing And it is not open to a court to sit in judgment over the judgment of the Legislature and ignore the express direction contained in the statute[1] The expression "shall be deemed to be part of the assets" in sub-section (1) suggests a fiction that the deposits do not in fact form a part of the assets of the insurer but it "shall be deemed" to form a part of the assets That can only be when the contingencies mentioned in the section are absent, that is, when the policy holders' liabilities are satisfied otherwise than from the deposits The word "deemed" is more commonly used for the purpose of creating a 'statutory fiction," that is for the purpose of extending the meaning of some term to a subject matter which it does not properly designate When used in that sense it becomes very important to consider the purpose for which the statutory fiction is introduced[2]

4 **"Shall not be susceptible of any assignment or charge," sub-section (1)** —When the deposits are treated as assets of the insurer, the latter is at liberty in the ordinary and due course of business, to make an assignment of those assets or a part of them or to create charges thereon The law does not impose any restriction on the company to deal with the assets as it pleases to do within the bounds of its memorandum and articles of association Even section 333 of the Companies Act 1956 [section 87A (3) of the Act of 1913] *inter alia* provides that a managing agent whose office stands terminated under section 324 or 332 of that Act shall be entitled to a charge on the assets of the company in respect of all moneys which are due to him from the company This section saves the deposits of the insurer from such charges or assignments He can neither assign nor create a charge on the deposits and if he does any it is contrary to this section and would be illegal

5 **'Nor shall it be available for discharge of any liability," sub-section (1)** —Normally and in the usual course of business assets of a company are available for discharge of any liability that the company may have incurred but an exception has been made in the case of the assets spoken of in this section The deposits shall not be available for discharge of any liability of the insurer except the liabilities arising out of policies of insurance issued by him and the deposits will remain as such so long as any such liabilities remain undischarged In other words these deposits will be available only for the discharge of liabilities arising out of policies of insurance issued by the insurer and for no other liabilities until any such liabilities are discharged in full

6 **'Nor shall it be liable to attachment in execution of any decree, sub-section (1)** —Properties mentioned in section 60 (1) of the Code of Civil Procedure (V of 1908) are liable to attachment and sale in execution of a decree They are lands houses other buildings goods money, bank notes, cheques, bills-of-exchange *hundis*, promissory notes, Government securities, bonds or other securities for moneys debts shares in a corporation etc, belonging to the judgment-debtor or over which or the profits of which he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf Properties which are not liable to such attachment or sale have also been set out in clauses (*a*) to (*p*) of the proviso to that section, of

1 *Malhotra v State* 1958 All 492.
2 *Sarangthem Nodiachand Singh v State of Manipur* 1956 Manipur 34; *see also Desai v S S A Kolgi* I L R [1956] Mys 88 — — — —

which compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, applies in so far as they are declared by the said Act not to be liable to attachment in clause (*k*) and any allowance declared by any Indian Law to be exempt from liability to attachment or sale in execution of a decree in clause (*o*) are exempted from attachment or sale

Although exemption of attachment of deposits made in pursuance of section 7 of the Insurance Act, 1938 has not been mentioned in the proviso to section 60 (1) of the Code, nonetheless the Insurance Act having provided such exemption in sub-section (1) of section 8, the deposits are not liable to execution of any decree except a decree obtained by a policy-holder of the insurer in respect of a debt due upon a policy Thus for the deposits to be attachable in execution of a decree under section 60 (1) of the Code the decree must relate to a debt due upon a policy of the insurer, otherwise the deposits are not attachable

7 **"Which debt the policy holder has failed to realise in any other way," sub-section (1)** —On a construction of section 8 and specially of the penultimate expression "has failed to realise in any other way," it will appear that the statutory deposit under section 7 of the Insurance Act can be attached in execution only as a last resort and where it has been shown by the decree-holder that he could not realise it in any other way Resort to this statutory deposit for the purpose of attachment before the decree-holder has exhausted other means and failed thereby to realise his decree is not permitted by law Such deposit under section 7 of the Act has certain statutory privileges as well as obligations It does not enjoy complete immunity from attachment But such attachment will only be allowed when there is no other means of realising the decree for which attachment is sought and where the decree is obtained by a policy-holder in respect of a debt due on a policy The policy behind this privilege of limited protection is obvious It is a wholesome provision for the benefit of the entire general body of policy-holders whom the insurance companies are expected to serve and this statutory deposit is a fund earmarked for discharge of liabilities arising on the policies issued by insurance companies While the deposit enjoys this partial privilege in respect of attachment it has the limitation of being incapable of assignment or subjected to any charge and cannot be used to meet any liability other than that arising on the policies [1]

8 **Deposit in respect of life insurance business, availability of, sub-section (2)** —Sub-section (2) of this section provides that where a deposit is made in respect of life insurance business it shall not be available for the discharge of any liability of the insurer other than liabilities arising out of policies of life insurance issued by the insurer The expression "the deposit made in respect thereof" suggests that where an insurer carries on life insurance business along with other classes of insurance business, such as fire, marine or miscellaneous insurance business, the deposit in respect of life insurance business shall not be available for discharging any liability of the insurer arising out of the policies of marine, fire or miscellaneous insurance In such a case deposit for life insurance business should be specially earmarked for claims arising out of the policies of life insurance But no such restriction is imposed in case of other classes of insurance business, that is to say, where an insurer carries on fire, marine and miscellaneous insurance business, the deposits made in respect of those three classes of insurance business can be available for discharging any liability of the insurer arising out of whether fire, marine or miscellaneous

5 *Sm Manorama Kundu v Fire and General Insurance Co , Ltd* , 60 C W N 370 (

3 **"Shall be deemed to be part of the as** Whenever the word "deemed" is used in statute or thing, it implies that the Legislature after due judgment in conferring that status or attribute to a p not open to a court to sit in judgment over the judgm ignore the express direction contained in the *statut* be deemed to be part of the assets" in sub-section (1 deposits do not in fact form a part of the assets of th deemed" to form a part of the assets That can onl mentioned in the section are absent, that is, when are satisfied otherwise than from the deposits commonly used for the purpose of creating a 'sta purpose of extending the meaning of some term does not properly designate When used in that tant to consider the purpose for which the statut

4 **"Shall not be susceptible of any section (1)** —When the deposits are treated as is at liberty in the ordinary and due course of of those assets or a part of them or to create c not impose any restriction on the company to to do within the bounds of its memorandum section 333 of the Companies Act 1956 [s *inter alia* provides that a managing ager under section 324 or 332 of that Act shall b of the company in respect of all moneys wh pany This section saves the deposits of assignments He can neither assign nor if he does any it is contrary to this sectio

5 **"Nor shall it be available fo section (1)** —Normally and in the usua are available for discharge of any liabil but an exception has been made in section The deposits shall not be the insurer except the liabilities arisi him and the deposits will remain as undischarged In other words, the discharge of liabilities arising ou insurer and for no other liabiliti in full

3 **Closure of business** —The provisions of section 9 with regard to refund of deposit will come into force where under a scheme of compromise under section 153, Companies Act, it is proposed not to change one kind of company into another kind, but, in the process of reconstruction to put an end to the old company which was limited by shares and to create a new mutual company [1] But no order for refund can be made under this section in respect of a discontinued business unless all the liabilities in respect of the same have been fully satisfied or otherwise provided for [2]

4 **Deposit in full, necessity of, for claiming a refund** —In order that a refund may be granted to an insurer under this section, in respect of any class of insurance business which he has ceased to carry on, it is not necessary that the entire deposit as prescribed in sub-section (1) of section 7 should first be made and separation of funds made thereafter When the business carried on is a combined kind of business as contemplated by section 7 (1) (*e*) the instalments provided for by sub-section (3) of that section are susceptible of division in the same way as the total amount itself is divided by sub-section (1) (*e*), *i e*, two-thirds may be allocated to the life insurance business and one-third to the insurance business of the other class Accordingly, where after carrying the other kind of business for a certain time the insurer discontinues it, the deposit made up to that time in instalments may be apportioned and a refund made of such part as does not relate to the life insurance business still carried on, but relates to the other business Thus an insurance company which had been carrying on business in life insurance as well as miscellaneous insurance business, discontinued the miscellaneous insurance business under section 52 of the Act from November, 1940 The company had deposited the sum of Rs 1,50,000 in three instalments in respect of the combined business up to January, 1940 After the miscellaneous insurance was discontinued, the company filed an application in court for refund of the sum of Rs 50,000 in respect of the miscellaneous insurance business In such a case the company was entitled to the refund of the sum claimed provided its liabilities in respect of the discontinued business were satisfied or fully provided for [3]

5 **Power of the court** —Under sub-section (1) of this section the court has been given the discretion to order the return to the insurer of so much of the deposit as does not relate to the class of insurance, if any, which he continues to carry on But before passing an order under this sub-section the court must be satisfied that the applicant's liabilities in India in respect of the class of insurance business which he has ceased to carry on, are fully paid or are otherwise provided for

6 **"Otherwise provided for"** —"Provision otherwise" for the purpose of this section must obviously be other than deposit itself Further, when the insurer wants to take back his deposit on making "provision otherwise" he will have to satisfy the court that the "provision otherwise" has been fully made and the court will be in a position to investigate the matter This, however, does not mean that if the insurer does not want to take advantage of this section he can say without submitting to the terms of this section that he has made "provision otherwise" because the deposit which is made under section 7 is more than all his liabilities of the insurance business that he has closed Even where the insurer's deposit is large and liabilities are small he

1 *Light of Asia Insurance Co Ltd In re* 45 C W N 979
2 *Navajivan Insurance Co Ltd* v *Superintendent of Insurance* I L R (1942) 1 Cal 481 46 C W N 284 201 I C 20 1942 Cal 294
3 *Ibid*

Refund of deposits

9 (1) Where an insurer has ceased to carry on in India any class of insurance business in respect of which a deposit has been made under section 7 or section 98 and his liabilities in India in respect of business of that class have been satisfied or are otherwise provided for, the Court may, on the application of the insurer, order the return to the insurer of so much of the deposit as does not relate to the classes of insurance, if any, which he continues to carry on

(2) An application under this section shall, if the applicant is carrying on any insurance business in any Part B State notified in this behalf by the Central Government in the official Gazette, be accompanied by a statement to that effect, and in such a case the Court shall not order the return of any deposit under this section unless it is satisfied, after giving notice to the chief insurance authority of that State, that the liabilities of the applicant to that State in respect of the class of business concerned have been satisfied or are otherwise provided for

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Closure of business*
4 *Deposit in full, necessity of for claiming a refund*
5 *Power of the court*
6 *"Otherwise provided for" when liabilities lesser and the deposit greater set off cannot be made from one with the other*
7 *Insurance business in Part B State application for refund, sub-section (2)*
8 *Return or transfer of deposit under English Act*
9 *Appeal*

1 Legislative changes —(*a*) Section 9 is renumbered as section 9 (1) and section 9 (2) is inserted by Act VI of 1946

(*b*) The word "India occurring in sub-section (1) was substituted by Act LXII of 1956

(*c*) The words "or section 98' were inserted by Act XI of 1939

(*d*) The words "Part B State" were substituted by A O 1950

(*e*) The words ' that State' were substituted by A O 1948

2 Object and scope —The object of section is to make provisions for refund of deposits when the insurer closes his business of insurance It also prescribes the procedure for such refund and also the procedure when the application for refund relates to any insurance business in any Part B State The section invests the court with the power to order the return to the insurer of the deposit or a part of it The provisions of this section can only be brought into operation when (i) the insurer has ceased to carry on any class of insurance business (ii) the business must be in India, (iii) deposit in respect of that class of business must have been made under section 7 or section 98 of the Act, (iv) the insurer's liabilities in India must have been satisfied (v) the liabilities must relate to the business which he has closed or (vi) the such liabilities if not satisfied must have been otherwise provided for, and (vii) the insurer makes application for refund to the court

3 **Closure of business** —The provisions of section 9 with regard to refund of deposit will come into force where, under a scheme of compromise under section 153, Companies Act, it is proposed not to change one kind of company into another kind, but, in the process of reconstruction to put an end to the old company which was limited by shares and to create a new mutual company [1] But no order for refund can be made under this section in respect of a discontinued business unless all the liabilities in respect of the same have been fully satisfied or otherwise provided for [2]

4 **Deposit in full, necessity of, for claiming a refund** —In order that a refund may be granted to an insurer under this section, in respect of any class of insurance business which he has ceased to carry on, it is not necessary that the entire deposit as prescribed in sub-section (1) of section 7 should first be made and separation of funds made thereafter When the business carried on is a combined kind of business as contemplated by section 7 (1) (*e*), the instalments provided for by sub-section (3) of that section are susceptible of division in the same way as the total amount itself is divided by sub-section (1) (*e*), *i e*, two-thirds may be allocated to the life insurance business and one-third to the insurance business of the other class Accordingly, where after carrying the other kind of business for a certain time the insurer discontinues it, the deposit made up to that time in instalments may be apportioned and a refund made of such part as does not relate to the life insurance business still carried on, but relates to the other business Thus an insurance company which had been carrying on business in life insurance as well as miscellaneous insurance business, discontinued the miscellaneous insurance business under section 52 of the Act from November, 1940 The company had deposited the sum of Rs 1,50,000 in three instalments in respect of the combined business up to January, 1940 After the miscellaneous insurance was discontinued, the company filed an application in court for refund of the sum of Rs 50,000 in respect of the miscellaneous insurance business In such a case the company was entitled to the refund of the sum claimed provided its liabilities in respect of the discontinued business were satisfied or fully provided for [3]

5 **Power of the court** —Under sub-section (1) of this section the court has been given the discretion to order the return to the insurer of so much of the deposit as does not relate to the class of insurance, if any, which he continues to carry on But before passing an order under this sub-section the court must be satisfied that the applicant's liabilities in India in respect of the class of insurance business which he has ceased to carry on, are fully paid or are otherwise provided for

6 **"Otherwise provided for"** —"Provision otherwise" for the purpose of this section must obviously be other than deposit itself Further, when the insurer wants to take back his deposit on making "provision otherwise' he will have to satisfy the court that the "provision otherwise" has been fully made and the court will be in a position to investigate the matter This, however, does not mean that if the insurer does not want to take advantage of this section he can say without submitting to the terms of this section that he has made "provision otherwise" because the deposit which is made under section 7 is more than all his liabilities of the insurance business that he has closed Even where the insurer's deposit is large and liabilities are small he

1 *Light of Asia Insurance Co Ltd In re* 45 C W N 979 481 46 C W N 284 201 I C 20 1942 Cal 294

2. *Navajivan Insurance Co Ltd v Superintendent of Insurance* I L R (1942) 1 Cal 3 *Ibid*

can always take advantage of this section and submit to an investigation by the court and take back his deposit, after depositing the small sum required to meet his liabilities [1] Thus, an insurer in claiming a refund of his deposit under this section cannot ask for a set-off of the amount of his liabilities which are less from the amount of his deposits which are greater and the court cannot order the return to the insurer of the balance amount after such set off

7 **Insurance business in Part B State, application for refund, sub-section (2)** —Where the applicant is carrying on any insurance business in Part B State notified as such by the Central Government in the official Gazette and he makes an application for refund of deposit under this section his application must be accompanied by a statement to the effect that he is carrying on insurance business in such State so notified In such a case it is obligatory on the court to give notice to the chief insurance authority of that State and to be satisfied, before it passes any order for refund, that the liabilities of the applicant to that State in respect of the class of business have been satisfied or are otherwise provided for

8 **Return or transfer of deposit under the English Act** —Under the Assurance Companies Rules, 1950, the court may order deposit fund to be paid or transferred out of court to the company where it may appear to be just and equitable to do and particularly where a company has ceased altogether to carry on within the United Kingdom any class of assurance business But under the said Rules it is also necessary before such an application for refund or transfer can be made or allowed that all its liabilities in respect of the deposit fund have been satisfied or are otherwise provided for [2]

9 **Appeal** —Orders passed by the High Court in exercise of its ordinary civil jurisdiction under sections 9 and 61 of the Act are appealable as the ordinary incidents of litigation in the absence of a specific limitation to exclude it Orders under this section is a judgment within clause 15, Letters Patent, Calcutta and the Superintendent of Insurance is entitled to appeal against an order under this section or section 61 of the Act [3]

Separation of accounts and funds

10 (1) Where the insurer carries on business of more than one of the classes specified in clauses (*a*), (*b*), (*c*) and (d) of sub-section (1) of section 7, he shall keep a separate account of all receipts and payments in respect of each such class of insurance business and where the insurer carries on business of the class specified in clause (*d*) of that sub-section whether alone or in conjunction with business of another class, he shall, unless the Controller waives this requirement in writing, keep a separate account of all receipts and payments in respect of each such sub-class of the class specified in clause (*d*) as may be prescribed in this behalf

Provided that no sub-class of the class of insurance business specified in clause (d) of sub-section (1) of section 7 shall be prescribed under this sub-section if the insurance business comprised

1 *Vanguard Fire and General Insurance Co Ltd v Messrs Fraser and Ross* 1960 S C 971 at p 978

2 *See* R 7 Assurance Companies Rules, 1950 ; S 20 Insurance Companies Act 1938 ; *Re Popular Life* (1909) 1 Ch 80 ; *Re United British* (1929) 2 Ch 430 ; *In the Light of Asia Insurance Co Ltd*, 85 ; *In the matter of* I L R (1942) 2 Cal C. W N 441 : 204 I C 175 : 1942 Cal 578

in the sub-class consists of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose

(2) Where the insurer carries on the business of life insurance, all receipts due in respect of such business, shall be carried to and shall form a separate fund to be called the life insurance fund the assets of which, shall, after the expiry of six months from the commencement of the Insurance (Amendment) Act, 1946, be kept distinct and separate from all other assets of the insurer and the deposit made by the insurer in respect of life insurance business shall be deemed to be part of the assets of such fund ,

and every insurer shall, within the time limited in sub section (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Controller a statement showing in detail such assets at the close of every calendar year duly certified by an auditor or by a person qualified to audit under the law of the insurer's country

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balance-sheet mentioned in clause (a) of sub-section (1) of that section

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department

Provided also that the Controller may call for a statement similarly certified of such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for

(2A) No insurer carrying on life insurance business shall be entitled to be registered for any class of insurance business in addition to the class or classes for which he has been already registered unless the Controller is satisfied that the assets of the life insurance fund of the insurer are adequate to meet all his liabilities on policies of life insurance maturing for payment

(3) The life insurance fund shall be as absolutely the security of the life policy-holders as though it belonged to an insurer carrying on no other business than life insurance business and shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only

of life insurance and shall not be applied, directly or indirectly for any purpose other than those of the life insurance business of the insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *"Separate account of all receipts and payments," sub-section (1) and Proviso*
(i) *Accounting, its purpose and function*
(ii) *"Liabilities," meaning of*
5 *Insurer's obligations, re life insurance business, sub-section (2)*
(i) *Life insurance fund*
(ii) *Statement of assets of life insurance fund, para 2 of sub-section (2), Provisos 1 and 2*
(iii) *Power of the Controller, sub-section (2), Proviso 3*
6 *Restriction on insurer doing life insurance business, sub section (2A)*
7 *Life insurance fund an absolute security of life policy holders, sub-section (3)*
8 *Reserve and fund*

1 Legislative changes—(*a*) The words "and where the insurer carries on business in this behalf" and proviso to sub-section (1) were added by Act XIII of 1941

(*b*) The word "Controller" occurring in sub-section (1) was substituted by Act XLVII of 1950

(*c*) The words "all receipts due in respect of such business" in sub-section (2) were substituted for the words "the excess of receipts over payments in respect of such business" by Act XIII of 1941

(*d*) The words "the assets of which all other assets of the insurer" in sub-section (2) were inserted by Act VI of 1946

(*e*) The words "and every insurer shall of the insurer's country" occurring as paragraph 2 of sub-section (2) and the three provisos immediately following were substituted by Act XLVII of 1950

(*f*) Sub-section (2A) was inserted by Act VI of 1946

(*g*) The words and figures "save as provided in section 49" occurring in sub-section (3) of the original Act were omitted by Act XIII of 1941

(*h*) The words "other than those of the life insurance business of the insurer" occurring in sub-section (3) were substituted by Act XIII of 1941

2 Object and scope—The object of the section is to secure the interests of policy-holders in the several separate classes of insurance business by giving them a special interest in the funds brought into being by the class of insurance business with which they are concerned. It seems to aim at giving the policy-holders in the nature of a security as against such parts of the assets as correspond to the separate account or fund which arises from the business with which they are concerned [1]

This section provides a machinery by which the object of securing the interests of policy-holders in the hands of an insurer doing composite insurance business can be achieved. The provisions have been made more stringent by directing the creation of the life insurance fund and declaring such fund as the

1 *See* Recommendations of Clauson Committee, (1)

'absolute security' of the life policy-holders than other classes of insurance business, such as, fire, marine or miscellaneous where the redemption of the pledge of the insurer is sought to be achieved by requiring him to keep a separate account of all receipts and payments in respect of each class of insurance business This section also restricts an insurer doing life insurance business from extending his field of operation in other class of insurance unless his liabilities in respect of his life insurance business are adequately covered It also prohibits the insurer from applying the life insurance fund either directly or indirectly to his any other class of business

3 **Applicability** —This section applies to an insurer carrying on business of more than one of the classes of insurance business, namely, life, fire, marine and miscellaneous insurance business, that is to say,

(*a*) insurer doing life and fire insurance business, or (*b*) an insurer doing life and marine, or (*c*) an insurer doing life and miscellaneous, or (*d*) an insurer doing fire and marine, or (*e*) an insurer doing fire and miscellaneous, or (*f*) an insurer doing marine and miscellaneous, or (*g*) an insurer doing life, fire, marine and miscellaneous, or (*h*) an insurer doing fire, marine and miscellaneous

But with regard to miscellaneous insurance business an insurer may not keep separate accounts in respect of each sub-class of miscellaneous insurance business, on Controller's waiving such requirement in writing Further, the provisions of this section will not apply where the insurance contracts of any sub-class of his miscellaneous insurance business and liabilities thereon do not extend beyond a period of one year [1] Regarding applicability to Life Insurance Corporation the words "financial year should be read in place of "calendar year" and sub-section (2A) should be deleted [2]

4 **"Separate account of all receipts and payments," sub section (1) and proviso** —Sub-section (1) of this section prescribes in mandatory language that a separate account of all receipts and payments in respect of each class of insurance business has to be kept by an insurer who happens to carry on more than one class of insurance business contemplated under the Act Thus, when he carries on two classes of insurance business, say, life and fire, or life and marine or the like or all the classes of insurance business, *viz*, life, fire, marine and miscellaneous, he should and must keep a separate account for each class of all receipts and payments thereon This means that he must not mingle one account with the other But to this mandatory rule an exception has been provided in case of miscellaneous insurance business, that is an insurance business which is not principally or wholly of any kind or kinds, such as, fire, life and marine insurance business An insurer doing such an insurance business either alone or in conjunction with business of another class need not keep a separate account of all receipts and payments in respect of each sub-class of his miscellaneous insurance business in cases as follows

(*a*) Where the Controller waives in writing that the insurer doing miscellaneous insurance business need not so keep a separate account of each sub-class of the said business, but so long as such waiver in writing is not obtained from the Controller it is obligatory on him, *i e* the insurer, to keep a separate account of all receipts and payments in respect of each such sub-class in a prescribed form, and

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1 For sub-classes of miscellaneous insurance business see Note 16 under section 2 at pp 84-93

2. *See* L. I C. Act, S 43 *post*

(*b*) where the insurance business of the sub-class consists of insurance contracts terminable by the insurer at intervals not exceeding twelve months and under which on a claim arising the insurer's liability ceases within one year of the date on which the claim arose

This is what is provided in proviso to sub-section (1) To claim the benefit under this proviso an insurer must fulfil two conditions, namely, (1) insurance contracts must be terminable by him at intervals not exceeding twelve months, and (2) his liability under the contract must cease within one year from the date of claim

(*i*) *Accounting, its purpose and functions* —The primary purpose of accounting is to give the proprietor or the manager of a business, information concerning not only the nature and the amounts of the assets, the liabilities, and the proprietorship, but also the effect of the operations of the business on these items In other words, the object of accounting is to provide inf r mation concerning property and the right to property, and to show how property and the rights to it have been affected by business operations It is the function of accounting to record to analyse and classify, and to summarize the activities and the effects of these activities for each business enterprise

(*ii*) *'Liabilities', meaning of* —The word 'liabilities' should not be equated with the term 'debt' Liabilities have an origin in contract, so liabilities are debt but all debts are not liabilities, as envisaged in this section Anything due and payable is debt The word 'liabilities' used in this section have an origin in the contract of insurance and must not be confused with other debts of the insurer Again when money is paid to a person who is not entitled to it, under the mistaken impression that the money was due to him, there is an obligation on him to refund the money and it would be a liability The liabilities as used in this section must have the origin in contract of the particular class of insurance and not all classes of contracts of insurance which the insurer may have entered into [1]

5 Insurer's obligations re life insurance business, sub section (2) — Under sub-section (2) of this section an insurer carrying on life insurance business has certain obligations with regard to that business His obligations are as follows (*a*) he shall bring all receipts due in respect of life insurance business together and carry same to form a separate fund known as the life insurance fund (*b*) he shall keep the assets of such fund distinct and separate from his all other assets (*c*) he shall furnish to the Controller a statement showing in detail such assets as at the end of every calendar year, and (*d*) he shall, before furnishing it to the Controller have the said statement duly certified by an auditor or by a person duly qualified to audit under the law of the insurer s country

(*i*) *Life insurance fund* —The ordinary dictionary meaning of the word fund is stock of money especially one set apart for a purpose In the same sense all receipts due in respect of life insurance business is set apart for the purpose of meeting the claims arising out of life insurance contracts The life insurance fund is formed out of all receipts due in respect of such business Sub-section (2) of this section enjoins in mandatory language that after the expiry of six months from the commencement of the Insurance (Amendment) Act, 1946, the assets

1 See *M Chettiar v Alagappa Ami* I L R (1963) Mad. 427 : 1961 Mad 438 ; *Fatehchand Jain v Gift Tax Officer* 65 C W N 106 : 1961 Cal 649

of the life insurance fund must be kept distinct and separate from all other assets of the insurer The deposit made by insurer in pursuance to section 7 of the Act also forms a part of the assets of the life insurance fund This fund then comprises (*a*) all receipts due in respect of life insurance business, and (*b*) the deposits made in pursuance to section 7 (1) (*a*) of the Act, sub-section (2) of this section by directing the formation of the life insurance fund virtually affirms the provisions of section 5 of the Indian Life Assurance Companies Act, 1912

Unlike the Indian Act, the English Act requires an insurance company carrying on other business and one of any, such as, life, industrial assurance, bond investment and employers' liability insurance, or two or more of those classes to enter in a separate account of the receipts of that class of insurance business or of each of those classes and to carry same to separate fund and each fund forms a security for the policy-holders in that class as if it belonged to a company which carried on no other business Exceptions to this rule have been provided in two cases, namely, (1) a company doing life business and established before 9th August, 1870, and (2) where on the face of policies the liability of the life insurance fund in respect of other business distinctly appears (see section 3, Insurance Companies Act, 1958)

(ii) *Statement of assets of insurance fund, para 2 of sub-section (2), Provisos 1 and 2* —Paragraph 2 of sub-section (2) provides in mandatory language that every insurer doing life insurance business must furnish a statement to the Controller wherein it should be shown in details the assets of the life insurance fund at the close of every calendar year Such statement must be duly certified by a qualified auditor It has to be furnished within six months from the end of the period to which the statement refers

First proviso to sub-section (2) of this section makes departure from the above rule in respect of an insurer to whom section 11 of the Act applies In such a case the statement of assets of the life insurance fund must be set out as a part of the balance-sheet mentioned in clause (*a*) of sub-section (1) of section 11 of the Act, that is to say, in case of both Indian and foreign insurers to whom the provisions of section 11 as to accounts and balance-sheet are applicable need not furnish the statement separately as enjoined in para 2 of sub-section (2) but such statement must be set out as a part of the balance-sheet which they are to prepare in terms of section 11 and to furnish to the Controller in terms of section 15 of the Act

Second proviso to sub-section (2) provides as to what the statement of the life insurance fund should show It enjoins that the statement should show all the assets of the life department and any deductions on account of general reserves and other liabilities of that department

(iii) *Power of the Controller, sub-section (2), Proviso 3* —Third proviso to sub-section (2) invests the Controller with power to call for a statement of the assets of the life insurance fund as at any other date specified by him This statement has also to be certified duly by a qualified auditor and the same has to be furnished to him within a period of three months from the date with reference to which the statement is called for The power of the Controller under this proviso is discretionary

6 Restriction on insurer doing life insurance business,

(2A) —When an insurer doing life insurance business desires to be for any class of insurance he cannot be so registered unless he Controller that the assets of his life insurance fund are sufficient to

his liabilities on policies of life insurance when they mature for payment But this will not prevent him from carrying on any class or classes of insurance business for which he has already been registered Thus an insurer carrying on life insurance business and fire insurance for which he has been registered desires to carry on the business of miscellaneous insurance for which he has been registered in spite of his complying with the provisions of sub-section (2) of section 3 of the Act but he shall have to satisfy further that the assets of his life insurance fund are in excess of or at par with all his liabilities on life policies Such liabilities are to be determined as at the date when the policies mature

7 **Life insurance fund an absolute security of life policy holders,** sub section (3) —The object of bringing into existence a separate fund known as the life insurance fund unlike other classes of insurance business has been stated in sub-section (3) of this section Such fund has been made the absolute security of the life policy-holders and it will be treated as by fiction belonging to an insurer carrying no other class of insurance business although in fact he has been doing such business The fund has been made immune from being applied either directly or indirectly for any purposes other than those of his life insurance business It has also been exempted from being liable for any of his contracts in any other class or classes of insurance business Thus an insurer, carrying on life and fire insurance business, cannot apply the life insurance fund for his fire insurance business nor does this fund become liable for insurer s liabilities arising out of fire insurance contracts The provisions of this sub-section are more or less similar to the like provisions made in the English Assurance Companies Act 1909, which were also adopted in section 6 of the Indian Life Assurance Companies Act 1912, which were also adopted section (2) of section 3 of the English Companies Act, 1958, also provides the same absolute security of the policy-holders for each fund of each class of business [1] A fund of any particular class under English law is as absolutely the security of the policy-holders of that class including creditors under re-insurance contracts [2] Even if the claims of the policy-holders of that class are satisfied, policy-holders belonging to any other classes have no prior claim or charge against the fund [3]

The life insurance fund as already stated includes the statutory deposit made in pursuance to section 7 and is for the benefit of the policy holders of the life insurance business for which the fund is kept and the general conditions of the insurer whose claims arise in connection with that business in preference to all other creditors of the company [4] According to practice in England, the investment of a particular fund is not kept separate from the investments of other funds, hence all the creditors of the company rank *pari passu* against the assets of the company except in so far as the receipts of a particular class of business in respect of which the separate fund is required to be kept, can be traced into a particular asset [5] Although the fund is not liable for any contracts of the company beyond [illegible] would not have been liable had the business of the company been [illegible] of insurance the class, and must not be applied directly or [illegible] any other purpose

1 *See* Note 5 (1) *supra*.
2 *Cf* , *re* Assurance Corporation Insurance Corporation Ltd (1) Re Sun Life Union and National Ltd (1914) 1 Ch. 724 reversed grounds in (1914) 2 77 C. A.
4 *See Re* Ch 5 rights of [illegible] been *re* Ge 1938)
[illegible] Co case policy-h

than the life insurance business to which the fund is applicable yet the company may transfer the surplus of the fund to another fund for distribution amongst its members [1]

8 **'Reserve' and 'fund'**.—The terms 'reserve' and 'fund' are almost synonymous and are interchangeable unlike the Indian and English statutes Some American statutes use the word reserve' instead of the word fund', although the term 'reserve' may apply to a variety of funds or securities depending on its context The term 'reserve' may be variously defined It may mean a fund required by law to be kept by the company to meet liabilities The reserve, being the amount theoretically necessary for reinsuring the risks, is sometimes termed "reinsurance fund or 'reinsurance reserve Similarly, the term includes "unearned premium reserve to meet future liabilities on policies "liability reserve" to satisfy claims indefinite in amount and as to time of payment but accrued on liability and workmen's compensation policies, and "loss claims reserve for the liquidation of accrued claims for unsettled losses on policies not provided for in the liability reserve But the reserve does not include the fund required for ordinary running expenses [2]

The reserve or a policy is the amount discounted at appropriate rates of interest to its value at that time, which will be required to meet the claims under the policy in the future [3] With respect to life insurance, the 'reserve is the amount of the accumulated savings resulting from the excess of the annual premiums over the mortality costs during the early years of the policy, that part of the annual premiums paid by insured which according to a specified table of mortality, must be set apart to meet or mature the company's obligations to insured [4] The term 'reserve or 'reserves' as used in life insurance has also been held not to refer to separate and distinct funds, money or securities set aside, but rather to a measurement or ascertainment of a liability or obligation, made by the State pursuant to statutory mandate, to meet which the company must at all times have certain approved securities, and when the term is used in this sense the approved securities do not constitute the 'reserve" The reserve is in no sense a fund or asset but is exactly, as defined by statute the amount of its policy obligations—the amount owing to its policy-holders—estimated in a certain fixed way, on a certain basis, by the State, as provided by statute, against which and to meet which a company must at all times have a certain amount of resources or assets The reserve of a life insurance company is simply another way of designating the amount of its policy obligations [5]

Accounts and balance-sheet

11 (1) Every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall at the expiration of each calendar year prepare with reference to that year—

1 *Wesleyan and General Assurance Society* v *Attorney General* (1933) Ch 591 *see* also the cases of *Re British Widows Assurance Co* (1905) 2 Ch 40 C A *Re South East Lancashire Insurance Co*, (1935) 1 Ch 225 C A where it has been observed that the deposits form part of the general assets of the company available for all creditors of the company for as to what is a separate sum capable of being carried to a separate fund *see Re Nelson and Co* (1905) 1 Ch 551

2 See *Maryland Casualty Co* v *U S* 251 U S 342 *Pomer* v *Reserve Loan Life Insurance Co* v *Hartz* 213 Ill App 161

3 *Caminetti* v *Manierre* 142 P 23 741

4 *Williams* v *Union Central Life Insurance Co* 291 U S 170 *Jefferson* v *New York Life Insurance Co* 152 S W 780

5. *Union Central Life Insurance Co* 25 Ohio N P N S 409 44 C J S pp 636 639

(*a*) in accordance with the regulations contained in Part I of the First Schedule, a balance-sheet in the form set forth in Part II of that Schedule ,

(*b*) in accordance with the regulations contained in Part I of the Second Schedule, a profit and loss account in the forms set forth in Part II of that Schedule, except, where the insurer carries on business of one class only of the classes specified in clauses (*a*), (*b*) and (*c*) of sub-section (1) of section 7 and no other business ,

(*c*) in respect of each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account in accordance with the regulations, and in the form or forms, set forth in the Third Schedule applicable to that class or sub-class of insurance business

(2) Unless the insurer is a company, as defined in clause (7) of sub-section (1) of section 2 of the Indian Companies Act, 1913, the accounts and statements referred to in sub-section (1) shall be signed by the insurer, or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm by two partners of the firm, and shall be accompanied by a statement containing the names, descriptions and occupations of and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period

(3) Where an insurer carrying on the business of insurance at the commencement of this Act has prepared the balance sheet and accounts required by the Indian Life Assurance Companies Act, 1912, or has based his accounts upon the financial and not the calendar year, the provisions of this section shall, if the Central Government so directs in any case apply until the 31st day of December, 1939, as if in sub-section (1) references to the calendar year were references to the financial year

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object*
4 *Scope*
5 *Financial year and calendar year, meaning of sub-section (3)*
6 *Balance-sheet, its form and interpretation sub-section (1) (a)*
(i) *Combined balance sheet with respect to 7*
(ii) *Form of balance sheet*
(iii) *Certificates in the balance-sheet*
(iv) *Debt in balance sheet without an acknowledgment*
7 *Profit and Loss Account, sub-section (1) (b)*

8 *Revenue Account, sub-section* (1) (*c*)
(i) *Revenue Account, meaning of*
(ii) *Force of Revenue Account*
(iii) *Combined Revenue Account*
(iv) *Information to be furnished in addition to Revenue Account*
9 *Authentication of the accounts, statements, etc , sub-section* (2)
10 *Balance-sheet and accounts prepared upon financial year, sub-section* (3)

1 Legislative changes —(*a*) The words "in respect of to k ep a separate account" in clause (*c*) of sub-section (1) were substituted for the words "in respect of each class of insurance business carried on by him" by Act XIII of 1941

(*b*) The words "a revenue account in the Third ' occurring in the same clause of the said sub-section were substituted by Act VI of 1946

(*c*) The words ' that class or sub-class of insurance business" occurring in the same clause of the sub section were substituted for the words "that class of insurance business" by Act XIII of 1941

(*d*) The words ' as defined in clause (2) 1913" occurring in sub-section (2) were substituted for the words and figures "to which the Indian Companies Act, 1913, applies" by Act XIII of 1941, and the words "by such persons" occurring originally were omitted by Act XLVII of 19 0

2 Applicability —This section applies to Indian as well as non-Indian insurers, but there is a difference between them in the manner of the preparation of accounts and balance-sheet While the Indian insurers are required to prepare such accounts and balance-sheet with regard to all insurance business transacted by them whether in India or outside India, the non-Indian insurers are required to prepare them in respect of the business transacted by such insurers in India only

With regard to the preparation of annual accounts and balance-sheet the English Insurance Companies Act, 1958, makes no distinction between English and non-English insurers but the provisions of the preparation of annual accounts and balance-sheets as contained in section 4 of the said English Act apply to every insurance company to which that Act applies and the Act is applicable to all insurance companies whether established within or outside Great Britain which carry on within Great Britain insurance business of certain classes mentioned in section 1 of the said Act This section has been applied to the Life Insurance Corporation of India, except sub-section (5)

3 Object —The object of the section is obvious By requiring the insurer to prepare accounts and balance-sheet is to help the insurer to know the financial condition of his insurance enterprise from time to time and the changes in the financial condition that take place over a period of time Only by seing the effect of the changes that take place over a certain period of time can the insurer judge whether his financial condition is improving and, if it is to what extent It also helps the State to put an effective check on the insurer's injudicious venture in the enterprise By comparing the present balance-sheet with the one prepared at a previous period, changes in financial condition may be determined The primary object of this section is to ensure that through these accounts and balance-sheet as much information as is reasonably required to be made available to the shareholders the policy holders and creditors of the company and to the general public

4 Scope —This section provides a machinery as to how manner in which the accounts and balance-sheet of every insurer pared Even if the insurer is a company registered under the C

it shall have to conform to the provisions of this section in preparing its account and balance-sheet, although sub-sections 210 and 211 of the Companies Act, 1956, corresponding to sub-sections 131 and 132 of the Act of 1913 and sub-sections 148 and 149 of the English Companies Act, 1948, make adequate provisions for the annual accounts and balance-sheet By virtue of section 17 of this Act the accounts and balance-sheet prepared in terms of this section will be treated as accounts and balance-sheet under the said provisions of the Comp nies Act, 1956, and filing of their copies to the Registrar will be a sufficient compliance with the provisions of that Act

The scope of this section is restricted to the preparation of (*a*) a balance-sheet conforming to the regulations in Part I of the First Schedule and in th form set out in Part II therein, (*b*) a profit and loss account conforming to the regulations in Part I of the Second Schedule and in the forms set out in Part II therein, and (*c*) a revenue account in accordance with the regulations and in the form or forms set forth in the Third Schedule This section also enjoins the preparation of a report on the affairs of the business during the period to which the accounts relate These accounts and balance sheet have to be prepared at the expiration of each calendar year with reference to that year and not on the expiration of the financial year as required under the Companies Act, 1956

Under the Companies Act, 956, it is also required of a company to prepare a balance-sheet in the form set out in Part I of Schedule VI and a profit and loss account complying with the requirements of Part II of the said Schedule of the said Act But by virtue of the provisos to sub-sections (1) and (2) of section 211 of the said Act insurance companies and certain other companies have been exempted from the operations of the said provisions of the said Act and for obvious reasons that the specific provisions for such accounts and balance sheet have been made in the Insurance Act itself

Section 4 of the English Insurance Companies Act, 1958, also provides that every insurance company to which that Act applies shall prepare in the prescribed form a revenue account for the year a balance sheet and, except where the company carries on insurance business of one class only and no other business a profit and loss account These accounts have to be prepared unlike the Indian Insurance Act, at the expiration of each financial year of the company

5 Financial year and calendar year meaning of, sub section (1) — Clause (17) of section 2 of the Companies Act 1956, defines a 'financial year' to mean in relation to any body corporate, the period in respect of which any profit and loss account of the body corporate laid before it in annual general meeting is made up, whether that period is a year or not But in relation to an insurance company financial year' shall mean the 'calendar year' as referred to in this sub-section of this section Under section 29 of the Banking Companies Act (X of 1945) the 'financial year' also means the 'calendar year Under the Assurance Companies Act, 1909 (9 Edw 7 C 49) financial year ' means each period of twelve months at the end of which the balance of the accounts of the assurance company is struck or, if no such balance is struck then the calendar year (*see* section 29 of the Act) The same definition has been adopted in the Insurance Companies Act, 1938 [*see* section 33 (1) of the Act] In respect of the accounts of the Life Insurance Corporation of India, the financial year is to be observed in place of calendar year

6 Balance-sheet its function form and interpretation, sub-section (1) — ' The function of a balance-sheet' as can be gathered from the evidence of the Institute of Chartered Accountants, in Cohen Committee Report, ' may

be stated to be an endeavour to show the share capital, reserves (capital and those which are available for distribution as dividends from time to time (and as so available) and liabilities of the company at the date at which it is prepared, and the manner in which the total amounts representing these are distributed over the several types of assets. A balance-sheet is a formal document and does, not, as a general rule purport to show the value of an undertaking at any particular date of the property and assets of various kinds as goodwill land plant, and machinery are stated in cases where the total value is less than cost, does it normally state the amount of value of stock in trade [illegible]

A balance-steet is prepared to show the financial position of a specific person, firm or body corporate on a specific date. The name of the person, or firm or body corporate for which the balance sheet is prepared and the day for which the report shows the financial condition of the concern should be stated in the heading or title The date used is the end of the financial year just elapsed A balance-sheet prepared at the close of the calendar year 1961, would be dated December 31, 1961

A balance sheet is [illegible] A=Liabilities or L=Proprietorship [illegible] Assets are the accounting equation is set up [illegible]

[illegible]		
[illegible]		
[illegible]		
[illegible]	A	y
[illegible]	L	in

In the report form the equation is expressed [illegible] et

A "combined balance-sheet" has been defined to include any combined statement made by an insurer of assets and liabilities in the form of a balance sheet which includes the assets and liabilities of any other insurer [1]

(ii) *Form of balance-sheet* —The balance-sheet of an insurer must be prepared in a form prescribed in Form A of Part II of the First Schedule in conformity with the Regulations contained in Part I of the said Schedule There shall be appended to it a statement in Form AA as set out in Part II of the same Schedule showing the market value and the book value of the assets in India, which will include amongst others, securities, debentures and shares, loans on company's policies, loans on mortgage of property, land and house property, cash in hand, cash on deposit in banks, agent's balances interest, dividends, outstanding premiums, and other assets A balance sheet is a statement prepared from records kept on the basis of double entry showing as at a given date, the sources from which an enterprise derived its fund and the various ways in which these funds were invested or applied It is a statement in a summarised form of the balances of the ledger accounts remaining after all revenue and expense accounts have been closed by transfer to revenue or profit and loss account [2]

(iii) *Certificates in the balance-sheet* —Every balance-sheet shall contain the following certificates, namely,—

(a) a certificate explaining how the values as shown in the balance-sheet of the investments in stocks and shares, have been arrived at, and how the market value thereof has been ascertained for the purpose of comparison with the value shown,

(b) a certificate certifying that the values of all the assets have been reviewed as at the date of the balance-sheet and that in the belief of the persons signing the certificate, the assets set forth therein are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings such as Loans, Reversions and Life Interests, Investments etc , and where such a certificate is not given, a full explanation of the basis upon which the values shown in the balance-sheet have been assessed shall be given in the certificate ,

(c) a certificate, where values of 'Holdings in subsidiary companies' or "House property" have been increased since the last previous balance-sheet, shall state the amount of every increase not so by due to the cost of subsequent additions or to increased profits, as the case may be and shall contain an explanation of the reason therefor,

(d) certificates signed by the auditor certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments,

(ii) to what extent, if any, he has verified the investments and transactions relating to any trust undertaken by the insurer as trustee, and

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1 *See* Regulations 3 and 9 (a) of Part I of Schedule I

2. *Leonard Biermans Workers Union v Second Industrial Tribunal* 65 C W N 1029

(iii) in the case of a combined balance-sheet, that he has audited the balance sheet and accounts of every insurer whose assets and liabilities are incorporated therein, if not, they have been certified by independent auditors stating the reservations, if any, made by them,

(e) when the balance-sheet relates either wholly or in part to life insurance business, a certificate signed by the persons who are required to sign the balance-sheet under the Act and the auditor certifying that no part of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of the Insurance Act relating to the application and investment of life insurance funds

Such certificates shall be signed by the insurer or in the case of a company by the chairman, if any, and two directors and the principal officer of the company, or in the case of a firm, by two partners of the firm

For signing of balance-sheet of the Life Insurance Corporation of India, *see* G S R No 734, dated 23rd August, 1958, set out in Appendix to L I C Act *post*

(iv) *Debt in balance-sheet whether an acknowledgment* —A statement of the amount of the debenture debt and accrued interest in the company's balance-sheet is a sufficient acknowledgment under section 24 of the English Limitation Act, 1939, even though the balance sheet is in fact, not received by the debenture-holder but the director who signed the balance-sheet cannot rely on such acknowledgment [1] So also a statement of interest due on a loan in company's account is an acknowledgment [2] But an entry in a balance-sheet of a sum due to a creditor cannot be sued upon as an account stated [3]

7 Profit and Loss Account, sub-section (1) (6) —An insurer doing combined insurance business or miscellaneous insurance business is required to prepare a profit and loss account according to the regulations in Part I in the forms set forth in Part II of the Second Schedule but an insurer doing only one class of insurance business *viz* fire, marine and life, need not prepare a profit and loss account as provided in clause (b) of sub-section (1) of this section Under sub-section (2) of section 211 of the Companies Act, every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall comply with the requirements of Part II of Schedule VI, so far they are applicable thereto of the said Act But proviso to that sub section exempts the insurance companies from the operation of the provisions of the said sub section It has also been provided in sub-section (5) of the said section that the balance-sheet and the profit and loss account of a company shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not close in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (IV of 1938) A profit and loss account is an account designed to show the amount of net profit earned or net loss incurred during the accounting year,

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1 *Re Allentse and Pacific etc Co* (1928) Ch 896 *see* also *Jones v Bellgrave Properties Ltd* (1949) 2 K B 700 *Re Colt exm (Barrow) Ltd* (1930) 2 Ch 44, *Re Trans Planters (Holding Company) Ltd* (1958) 1 W L R 822, *see* also Palmer's Company Law 20th Edn p 626

2 *Ledingham v Bermuda Estanica Co* (1947) 1 All E R 749

3 *John Shaw & Sons (Salford) Ltd* (1935) 2 K B 113

also the various headings under which the profits have been earned and expenses incurred The balance of profit and loss account, in case of profit, is included in the liabilities column of the balance-sheet and in the case of loss in its assets column [1]

Under the English Insurance Companies Act, 1958, every insurer is required to prepare a profit and loss account except where the company carries on insurance business of one class only and no other business [2]

The statement of profit and loss is prepared to show the result of the operations of a specific business during a particular period of time What ever the length of the period, the period is known as fiscal period The profit and loss account is sometimes called by the more descriptive title 'operating statement' The statement of profit and loss that accompanies a balance sheet measures the effect of the operations of the accounting period just preceding the date of the balance-sheet The balance-sheet is cumulative that is, it shows the financial position resulting from the activities summarized on all previous statements of profit and loss The statement of profit and loss is limited to a particular accounting period, it is one of many such statements that taken together, would give the result of the total volume of activities since the enterprise began

In the Profit and Loss Account and Profit and Loss Appropriation Account of an insurer, the items on the income side must relate to income whether actually received or not and the items on the expenditure side must relate to expenditure whether actually paid or not Similarly, deductions from interest, dividends and rents in respect of income-tax must include all amounts of such tax whether or not it has been or is to be deducted at source or paid direct Again if the insurer so desires he may include interest dividends and rents less income-tax shown in the Revenue Accounts for any classes of business except life insurance including annuity business but they should be included with the corresponding items in the Profit and Loss Account (*see* Regulations in Part I, Schedule II of the Act)

8 **Revenue Account, sub-section (1) (c)** —In addition to the balance-sheet and the profit and loss account an insurer who is required to keep a separate account of receipts and payments under sub-section (1) of section 10 *i e*, doing more than one class of business, shall have to prepare at the expiration of each calendar year a revenue account with reference to that year in accordance with the regulations and in the form or forms set forth in the Third Schedule applicable to that class or sub-class of insurance business In respect of life insurance business, Form D and in respect of fire, marine and miscellaneous insurance business Form F have been prescribed Under the English Insurance Companies Act, 1958, every insurance company doing combined insurance business is also required to prepare a revenue account for the year at the expiration of each financial year (*see* section 4 of the Act) Various forms have been prescribed under the Insurance Companies (Forms) Regulations, 1958 in conformity with which revenue accounts of different insurance business have to be prepared (*see* Form 'A For Life Assurance, 'B for Bond Investment 'C' for Accident Insurance, 'D for Fire Insurance 'E for Motor Vehicle Insurance F' for Employers Liability Insurance and 'G for Marine Aviation and Transit Insurance) It may be noted that neither the Companies Act nor the Banking Companies Act does make any provision for the preparation of any revenue account as envisaged in the Insurance Act.

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1 *Leonard Burmans Workers Union v Second Industrial Tribunal* 65 C. W N 1029

2. *See* S 4 of the Act

(i) *Revenue Account, meaning of* —The ordinary dictionary meaning of the word 'revenue' is income But every income is not revenue Thus, capital of a business is also income but a capital may be a fixed capital or a circulating capital The latter is generally known as revenue and is accounted for in the Revenue Account The distinction between fixed capital and circulating capital is that "fixed capital is what the owner turns to profit by keeping it in his own possession, circulating capital is what he makes profit of by parting with it and letting it change masters"[1] Similarly, capital expenditure is a thing that is going to be spent once and for all and income expenditure is a thing which is going to recur every year But this is not the decisive test in every case[2]

(ii) *Form of Revenue Account* —Where a Revenue Account is prepared in Form D, a separate revenue account must be prepared for every class or sub-class of business in respect of which the insurer is required to maintain a separate account revenue account in respect of miscellaneous insurance is to be prepared in Form F but it would be exclusive of any sub-class of such business When a separate account is required to be kept for a sub-c ass of miscellaneous business, the revenue account of such sub-class may be prepared either in Form D or F with such modifications as the Controller may authorise

(iii) *Combined Revenue Account* —When a Combined Revenue Account is prepared it must also conform to the said forms and it must clearly show on the face thereof that it is a Combined Revenue Account and must set out fully the name of every insurer required to make separate returns under the Act, if any other insurer's revenue and expenditure are included that fact must also be stated

(iv) *Information to be furnished in addition to the Revenue Account* —In addition to the Revenue Account the following informations shall be supplied

(a) gross premium written direct in India, *i e*, the premium income without taking into account premiums or reinsurance ceded or accepted, for every class or sub-class of business in respect of which the insurer is required to maintain a separate account, and

(b) gross claims payable directly by the insurer in India (that is to say, the claims without taking into account claims of reinsurance ceded or accepted) separately for fire, marine and miscellaneous insurance business

9 Authentication of the account, statement, balance sheet, and profit and loss account, sub-section (2) —The accounts and statements referred to in sub section (1), namely, the balance-sheet the profit and loss account and the revenue account shall be signed by the insurer when he is not a company In the case of the latter those accounts and statements shall be signed by the chairman, if any, and two directors and the principal officer of the company In the case of a firm, they are to be signed by two partners of the firm

1 *John Smith and Sons* v *Moore*, (1921) 2 A C 13

2. *See Vallambrosa Rubber Co* v *Farmer* 5 T C 529 *Anglo-Persian Oil Co Ltd* v *Dale* (1932) 1 K B 124 *Union Cold Storage Co* v *Ellerker* (1938) 4 All E R 673 *see also I T Commissioner* v *Volta Tailing and Sons* (1959) 2 S C A 184 20

1959 S. C. 814 *Commissioner of I. T.* v *Jessop Fam.* 1559 S. C. [illegible]

[illegible] *Commissioner of I T* v *Pakera Ltd.*, 1959 S C [illegible]

[illegible] *Assam Bengal Cement Corporation of I. T.* v [illegible] I S C R 572 - 1958 S [illegible]

Those accounts and statements must be accompanied by (*i*) a statement which will contain (*a*) the names, descriptions and occupations of the persons in charge of the management of the business, and (*b*) the directorships held by them, and (*ii*) a report on the affairs of the business during the period to which those accounts and statements refer

Under the English Companies Act, 1958, every account, balance sheet or statement required to be prepared under that Act must be signed by the chairman and two directors of the company and by the principal officer of the company and, if the company has a managing director, by the managing director (*see* section 8 of the said Act)

10 Balance-sheet and accounts preparad upon the financial year, sub-section (3) —Where a balance-sheet and the accounts required by the Indian Life Assurance Companies Act 1912 (VI of 1912), now repealed, had been prepared by an insurer doing the insurance business at the commencement of the Insurance Act, 1938, and had based his accounts upon the financial year and not the calendar year, he could be permitted to do so until the 31st day of December, 1939 and when the Central Government would so direct in any case In such cases the references to the calendar year in sub section (1) should be read as references to the financial year in the said sub-section The provisions under this sub-section have been made to permit the insurers carrying on insurance business at the commencement of the Insurance Act 1938 which was brought into force on 1st July, 1939, some time to adjust the accounts from the financial year to the calendar year

Audit

12 The balance-sheet, profit and loss account, revenue account and profit and loss appropriation account of every insurer, in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, shall, unless they are subject to audit under the Indian Companies Act, 1913, be audited annually by an auditor, and the auditor shall in the audit of all such accounts have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities and penalties imposed on, auditors of companies by section 145 of the Indian Companies Act, 1913

SYNOPSIS

1 *Applicability*
2 *Object and scope*
3 *'Shall be audited annually by an auditor"*
4 *Powers of the auditor*
5 *Functions of the auditor*
6 *Duties and liabilities of the auditor*
7 *Persons not to be appointed auditors*
8 *Status of auditor*

1 **Applicability** —This section has not been made applicable to companies carrying on insurance business and incorporated under the Companies Act 1956 as they are subject to audit under the provisions of that Act. Under section 229 of the said Act only the person appointed as auditor of the company or where a firm is appointed, only a partner in the firm practising in India has been given the authority to sign the auditor's report or sign and

authenticate any other document of the company required by law to be signed or authenticated by the auditor [1]

2 **Object and scope** —The object of the section is to have the balance-sheet and the accounts of the insurer as prepared by him according to the provisions of section 11 of the Act verified by a qualified auditor The auditing is done in the interests of the financial obligations of the insurer and also for the interests of the policy-holders and in the case of a corporate body for the interests of the shareholders of the company This section prescribed in mandatory language that the balancesheet, profit and loss account, revenue account and profit and loss appropriation account shall be audited annually by an auditor This section also invests the auditor with all the powers and duties as an auditor appointed under the Companies Act has and also subjects him to the liabilities and penalties as provided in the said Act

Auditing and investigations represent a field of accounting activity, which reviews independently the "general" accounting Auditing is usually done by an independent accountant who examines records and reports and issues a statement of opinion regarding their accuracy, together with a report containing confidential advice to the management

3 **"Shall be audited annually by an auditor"** —It is mandatory for an insurer to have his accounts, *viz* , the balance sheet, profit and loss account, revenue account and profit and loss appropriation account, audited by an auditor who must be a person qualified under the Chartered Accountant Act, 1949 as defined in sub-section (4) of section 2 of the Act The audit has to be made with respect to every calendar year and not in respect of financial year as provided in the Companies Act, 1956 Although no provision is made in this section for appointment of auditor as envisaged in section 224 of the said Act his appointment has to be made at least in the case of a company incorporated under that Act at each annual general meeting and he will hold office from the conclusion of that meeting until the conclusion of the next annual general meeting

4 **Powers of the auditor** —The auditor shall have a right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the company such information and explanations as he may think necessary for the performance of his duties as auditor But if he is refused access to the books because of his negligence, the court refused to make an order for such access to be given to him and directed the members to meet to ascertain the wishes of the company [2]

The auditor is also entitled to have all notices of and other communications relating to any general meeting of a company just like other members of the company and he shall be entitled to attend any general meeting and to be heard in any such meeting which he attends on any part of the business which concerns him as auditor [3] These statutory powers of the auditor cannot be curbed in any way Buckley, L J , observed thus "Any regulations which precluded the auditors from availing themselves of all the information to which under the Act they are entitled as material for the report which under the Act they are to make as to the true and correct state of the company's affairs

1 *See* Note 2 under section 11 *supra* for its applicability to Indian and non-Indian insurers and in respect of which business the said accounts are to be audited.

2 *Cuff v London and County Land and Building Co* (1914) 1 Ch 440

3 S 231 Companies Act 1956 and S 162 (4) of the English Companies Act 1948.

are, I think, inconsistent with the Act "[1] The working papers necessary for preparing the accounts as envisaged in the Act are to be treated as property of the auditors but the correspondence with third parties when they are acting as agents of the company belongs to the company[2] Again, it is doubtful whether any lien for fees exists on records when the sole work has been that of audit, although accountants external to the company may have such lien on books of account on which they have been working[3]

5 **Functions of auditor**—It is true that the proper function of an auditor is to verify the sum, the arithmetical conclusion, by reference to the books and all necessary vouching materials and oral examinations But it is also true that he is not to be confined to the mechanics of checking vouchers and making arithmetical computations as he is not to be written off as a professional "adder-up and subtractor" His vital task is to take care to see that errors are not made, be they errors of computation, or errors of omission or commission or downright untruths To perform this task properly, he must come to it with an inquiring mind—not suspicious of dishonesty—but suspecting that someone may have made a mistake somewhere and a check must be made to ensure that there has been none The rule in *Kingston Cotton Mills Co*,[4] did not relieve an auditor of his responsibility for making a proper check He may come on a payment which, it appears to him, may be unlawful, in that it may not be within the powers of the Corporation, or improper in that it may have no warrant or justification He is, then, not only entitled but bound to inquire into it and, if need be, to disallow it. It may be, of course, that he has sufficient knowledge to deal with it himself, as many accountants have, but if it be beyond him, he is entitled to take legal advice on the principle stated in *Bevan v Webb*[5] that "permission to a man to do an act, which he cannot do effectually without the help of an agent, carries with it the right to employ an agent"[6]

Lindley, L J, has observed thus "A person whose duty it is to convey information to others does not discharge that duty by simply giving them so much information as is calculated to induce them, or some of them, to ask for more Information and means of information are by no means equivalent terms an auditor who gives shareholders means of information, must add of information in respect of a company's financial position, does so at his peril and runs the very serious risk of being held, judicially, to have failed to discharge his duty"[7] It has also been observed that an auditor is a watch-dog not a blood hound"[8] but "he will not have performed the functions of his office if after one howl he retreats 'under the barn', or if he confines his protest to a fellow watch-dog"[9] Again "an auditor is not bound to do more than exercise reasonable care and skill in making inquiries and investigations He is not an insurer he does not guarantee that the books do correctly show the true position of the company's affairs he does not even guarantee that the balance sheet is accurate according to the books of the company he must

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1 *Newton v Birmingham Small Arms Co* [1906] 2 Ch 378.
2 *Chantrey Martin v Martin* [1953] 2 Q B 29
3 *Fenwick, Stobart & Co Ltd* [1902] 27 Acct L J 133; *In Arthur Francis Ltd* [1911] 16 Acct L R 61
4 [1896] 2 Ch 279
5 [1903] 2 Ch 390
6 *Fenwick Ltd v Stobart & Co Ltd* [1902] 1 All E R 844 n; *Robarts v Hopwood* [1923] A C 578 at p 605; *Re Kahnke Fairfield v Rawlinson* [1947] 2 All E R 5 at p 316
7 *Re London and General Bank (No 2)* [1895] 2 Ch 673 at p 684
8 *In Kingston Cotton Mills Co (No 2)* [1896] 2 Ch 279 at p 288.
9 *International Laboratories Ltd v Lowe and others* [1933] 1 D L R 381 reversed [1933] 3 D L R 65

be honest, *i e*, he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true [1]"

6 **Duties and liabilities of the auditor**—An auditor is required to make his report on the accounts examined by him and such report must state—

(*a*) that in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the required information under the Act and give a 'true and fair' view,

(*i*) of the state of the company's affairs as at the end of its financial or calendar year, in the case of the balance-sheet, and

(*ii*) of the profit or loss for its financial or calendar year, in the case of profit and loss account

(*b*) that he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit,

(*c*) that in his opinion, proper books of accounts as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him,

(*d*) that the report on the accounts of any branch office audited by a person other than himself has been forwarded to him and the manner in which he has dealt with the same in preparing his report,

(*e*) that the company's balance-sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns, and

(*f*) if his report is a qualified report, he has given the reasons therefor [2]

An auditor's duties do not come to an end in his merely verifying the rithmetical accuracy of the balance-sheet or its substantial accuracy or in camining the books and taking reasonable care to see that their contents are bstantially correct, but his duties extend to consider whether payments made y the company were authorised by the articles He should not be content ith a certificate that securities are in the possession of any person or body of ersons however trustworthy, unless the certificate is given by a bank or other erson who in the ordinary course of business would usually be entrusted with ich securities [3]

The auditors would not be discharging their responsibilities if they were ot to disclose in their reports irregularities, such as, inadequate provision of epreciation, under or over-valuation of current assets, improper allocation f reserves improper classification and debts and loans, etc, when these irregularities or defects come to their notice in the course of their carrying out the udit of the companies concerned [4]

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1 *Re London and General Bank (No 2)* (1895) 2 Ch 673 at p 684

2 *See* S 227 of the Companies Act 1956 and S 162 of the English Companies Act 1948.

3 Halsbury's Laws of England 3rd Edn., Vol VI p 387 *see* also *Re City Equitable Fire Insurance Co* (1925) Ch 407

4 *See* Report to Parliament on the Working of the Companies Act 1956, 3rd Annual Report, para 164

An auditor is bound to verify the assets of the company himself He ought not to rely on the verification done by persons appointed by the company itself [1] An auditor will be guilty of misconduct and will be suspended from membership and practice when,—

(*a*) he did nothing at all to inform himself of the real affairs of the company or the manner in which the balance sheet has been prepared, namely, that he accepted certain lists or statements submitted to him by the management, without further enquiry,

(*b*) he had issued the statutory certificates provided for in Regulations 7 (*c*) and 7 (*d*) (i) Part I of First Schedule to the Insurance Act without verifying the securities relating to loans on policies which had already lapsed ,

(*c*) he had granted the statutory certificate under section 145 (2) of the Companies Act, expressing the opinion that the balance-sheet and profit and loss account for the years covered by the certificate had been drawn up in conformity with law, although the revenue account of the insurance company had not been drawn up in conformity with the provisions of the Insurance Act , and

(*d*) where the amounts of claims on matured policies outstanding thereon had not been shown in the balance-sheet against appropriate heading, which had resulted in showing reduced amount of outstanding liabilities [2]

The auditor is also held liable in the following cases

(*i*) when dividends were paid out of capital primarily because the auditor had not complied with the provisions of the Articles even though he had not been supplied with a copy of them,[3]

(*ii*) where he had failed to verify one of the assets in the balance sheet, *viz* , the petty cash,[4]

(*iii*) where he had failed to satisfy himself regarding the adequacy of the provision for bad debts and the company suffers,[5]

(*iv*) where he had failed to report to the members that certain assets in the balance-sheet were overvalued and as a result dividends had been paid out of capital,[6]

(*v*) where he was a party in the circulation of a written statement of account which he knew to be false in a material particular [7]

Section 233 of the Companies Act 1956, provides that if any auditor's report is made, or any document of the company is signed or authenticated otherwise than in conformity with the requirements of sub-sections 227 and 229 of that Act the auditor concerned and the person, if any, other than the auditor who signs the report or signs or authenticates the document shall, if the default is wilful, be punishable with fine which may extend to one thousand rupees

1 *Institute of Chartered Accountants* v *Rajaram* (1960) 30 Com Cases 67 I L R (1960) Mad. 55 1960 Mad. 122 *see* also *Council of Institute of Chartered Accountants of India In re* (1961) 31 Com Cas 567

2. *Controller of Insurance* v *H C Das* 1957 Cal 387

3 *Lands Estate Building and Investment Co* v *Shepherd* (1887) 36 Ch D 707

4 *London Oil Storage Co Ltd* v *Seear Hasluck and Co* (1904) Acct L. R 30 at p. 93

5 *A E Green and Co* v *Cent al Advertising and Discount Corporation Ltd* (1920) Acct L R xiii p 1

6 *Re London and General Bank (No 2)* (1895) 2 Ch 673

7 *R* v *Kylsant* (1932) 1 K B 442.

But where the auditors had reported to the directors, who were also the sole shareholders that the system of book-keeping was inadequate and that there was insufficient internal check upon cash sales, they could not be held liable because they did not report same to the shareholders [1]

7 **Persons not to be appointed as auditor** —None of the following persons shall be qualified for appointment as auditor of a company

(*a*) a body corporate ,

(*b*) an officer or employee of the company ,

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company ,

(*d*) a person who is indebted to the company for an amount exceeding one thousand rupees or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees ,

(*e*) a person who is a director or member of a private company, or a partner of a firm, which is the managing agent or the secretaries and treasurers of the company ,

(*f*) a person who is a director or the holder of shares exceeding five per cent in nominal value of the subscribed capital, of any body corporate which is the managing agent or the secretaries and treasurers of the company [2]

8 **Status of auditors** —The auditor may be regarded as agent of the members who appoint him to carry out certain duties enjoined under the Act under which the audit is made for the purposes of audit only but normally he is not such an agent as to acknowledge a debt on behalf of the company by signing his statutory report on the balance-sheet [3] Facts coming to the knowledge of the auditor cannot be imputed to the shareholders as constructive notice to them [4] An action may be taken against an auditor for his negligence in the execution of his duties when, as a result members suffer some loss but his liability does not extend to third parties with whom no privity of contract exists [5]

Actuarial report and abstract

13 (1) Every insurer carrying on life insurance business shall, in respect of the life insurance business transacted by him in India, and also in the case of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all life insurance business transacted by him, once at least in every three years cause an investigation to be made by an actuary into the financial condition of the life insurance business carried on by him, including a valuation of his liabilities in respect thereto and shall cause an

1 *Pendlebury's Ltd* v *Ellis Green and Co* (1936) 80 Acct L. R 39 *see* the observations of Swift J

2 S 226 (3) Companies Act 1956 S 161 of the English Act for qualifications of an auditor *see* Note 3 under section 2 p 14 *supra*

3 *Re Transmanica (Holding Company) Ltd* , (1958) 1 W L. R 822 interpreting *Jones* v *Bellgrave Properties Ltd* , (1949) 2 K B 700

4 *Spackman* v *Evans* (1868) L R 3 H L. 171

5 *Candler* v *Crane Christmas and Co* (1951) 2 K. B 164

abstract of the report of such actuary to be made in accordance with the regulations contained in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule

Provided that the Controller may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than four years from the date as at which the previous investigation was made

Provided further that for an insurer carrying on life insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be—

(*a*) the 31st day of December, 1950, or the date of expiration of five years from the date as at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date—

(*i*) before the 31st day of December, 1946, but not more than five years before such commencement, or

(*ii*) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in a life insurance fund ,

(*b*) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date—

(*i*) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund , or

(*ii*) after the 30th day of December, 1947, but before the 31st day of December, 1948 ,

(*c*) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after the 30th day of December, 1948, but before the 1st day of January, 1950

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in India shall, for the purposes of the preceding proviso, be deemed to be the date as at which the last investigation

was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund

(2) The provisions of sub-section (1) regarding the making of an abstract shall apply whenever at any other time an investigation into the financial condition of the insurer is made with a view to the distribution of profits or an investigation is made of which the results are made public

(3) There shall be appended to every such abstract as is referred to in sub section (1) or sub-section (2) a certificate signed by the principal officer of the insurer that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation

(4) There shall be appended to every such abstract a statement, in conformity with the requirements of Part II of the Fifth Schedule and prepared in accordance with the regulations contained in Part I of that Schedule, of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract

Provided that, if the investigation, referred to in sub-sections (1) and (2), is made annually by any insurer, the statement need not be appended every year but shall be appended at least once in every three years

(5) Where an investigation into the financial condition of an insurer is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by this Act

(6) The provisions of this section relating to life insurance business shall apply also to any such sub-class of insurance business included in the class 'Miscellaneous Insurance' as may be prescribed under sub-section (1) of section 10 , and the Controller may authorise such modifications and variations of the regulations contained in Part I of the Fourth and Fifth Schedules and of the requirements of Part II of those Schedules as may be necessary to facilitate their application to any such sub-class of insurance business

Provided that, if the Controller is satisfied that the number and amount of the transactions carried out by an insurer in any such sub-class of insurance business is so small as to render periodic

investigation and valuation unnecessary, he may exempt that insurer from the operation of this sub-section in respect of that sub-class of insurance business

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Actuary his qualifications and functions*
5 *Investigation by an actuary actuary vis-a-vis the insurer*
6 *"Cause an abstract of the report of the actuary to be made" sub-section (1)*
(i) *Statements to accompany the abstract*
(ii) *What the abstract shall show ?*
7 *Periodicity of the investigation and Controller's power thereto*
(i) *Last date as at which first investigation is to be made*
(ii) *Last date of first investigation where no investigation has been made*
8 *Procedure in cases of other investigations sub-section (2)*
9 *Certificate to be appended to abstract sub-section (3)*
10 *Statement to be appended to abstract, sub-section (4)*
11 *Investigation made as at a date other than the expiration of the year of account, procedure sub-section (5)*
12 *Investigation in respect of any sub-class of miscellaneous insurance sub-section (6)*

1 Legislative changes —(*a*) The words "every three years" occurring in sub-section (1) and proviso to sub-section (4) were substituted by Act XLVII of 1950

(*b*) The word "India" occurring in provisos 2 and 3 to sub-section (1) were substituted by Act LXII of 1956

(*c*) The provisos to sub-section (1) were added by Act XLVII of 1950

(*d*) The word 'Controller" occurring in sub-section (6) was substituted by Act XLVII of 1950

(*e*) Sub-section (6) was inserted by Act VI of 1946

2 Applicability —The provisions of this section are applicable to every insurer carrying on life insurance business in India and also to an insurer who is a foreign insurer in respect of all life insurance business transacted by him. But with regard to the class of insurance business the provisions of the section have been made applicable, in addition to life insurance business, to miscellaneous insurance business So an insurer carrying on 'miscellaneous insurance business is also amenable to this section although the Controller has been given the discretion to exempt an insurer from the operation of the section when the business done in respect of any sub-class of the miscellaneous insurance business is very small This section has also been applied to the Life Insurance Corporation of India except the provisos to sub-section (1)

3 Object and scope —This section is a double protection to the policy-holders as in addition to the informations to be gathered from the balance-sheet profit and loss account and revenue account, they will be in a position to know the financial stability of the insurer's venture and also whether its enterprise in the life insurance business is based on scientific principles i.e., assured rates in relation to life insurance policies and the advantages, terms and conditions offered in such policies are workable and sound Unlike other

classes of insurance business life insurance after providing coverage against a risk also provides the element of investment which other kinds of insurance do not But premium is the price of insurance sought for in all classes of insurance In life insurance business this premium is fixed on mortality law formulated on the basis of past experience The whole theory of life insurance has its basis on the mortality tables which have been defined as instruments to measure the probability of living or of dying These tables have their origin in James Bernoulli's Theorem of Large Numbers The actuary by his scientific knowledge of these mortality tables has the means to come to a conclusion as to whether the assured rates in life policies *vis a vis* the terms and conditions in such policies are workable and sound By making the provisions for a triennial investigation of the financial condition of an insurer doing life insurance business by an actuary the Legislature seem to permit the insurer to make a review of his terms and conditions, to policy-holder to know the stability of his investment and extent of his protection against risk and the state to ascertain the desirability of the insurer's continuing in such business and if so, whether other requirements by way of investment or other impositions would be necessary in the circumstances

This section provides a machinery as to how the actuary would make an investigation into the financial condition of the life insurance business and how he would value its liabilities and the form in which the abstract of his report is to be drawn The section also prescribes the last date at which the first investigation at the commencement of the Insurance (Amendment) Act, 1950 shall have to be made It also prescribes what statement or statements have to be appended to the said abstract, and how the certificate to be appended thereto has to be authenticated and by whom The section also confers certain powers on the Controller, such as, by extending the date by not later than four years from the date of last investigation, by modifying and varying the regulations for their application to any sub-class of miscellaneous insurance business and by exempting such insurer from the operation of causing an investigation to be made in respect of any sub-class of miscellaneous insurance business where the business is too small, to justify such periodic investigation and valuation

4 **Actuary, his qualifications and functions** —The actuary referred to in this section is an actuary defined in sub-section (1) of section 2 of the Act For his qualifications and functions, *see* Note 2 of section 2 at pp 13 and 14, *supra*

5 **Investigation by an actuary Actuary vis a vis the insurer** — The duties of an actuary under this section are (*i*) to make an investigation into the financial condition of the life insurance business carried on by the insurer, (*ii*) to make a valuation of the insurer's liabilities in respect of his life insurance business, and (*iii*) to prepare a report of the investigation and valuation made by him The duties of an insurer on the other hand, are (*i*) to appoint an actuary at every third year, if no permanent actuary is appointed, (*ii*) to cause an investigation and valuation of his liabilities made by such actuary in every three years and (*iii*) to cause an abstract of the actuary's report made to him in accordance with the regulations in Part I of the Fourth Schedule and in conformity with the requirements of Part II of that Schedule

6 **"Cause an abstract of the report of the actuary to be made' sub-section (1)** —The abstract as the word indicates, should be the essence or summary of the report of the actuary and not his whole report The

must primarily show (i) the proportion which any part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums shown separately as immediate profits, deferred profits, profits under discounted bonus systems or without profits, and (ii) the average rates of interest yielded by the assets, whether invested or not, constituting the life insurance fund for each of the years covered by the valuation date, *i e*, the date as at which the valuation is made

The abstract prepared in terms of Part II of the Fourth Schedule must be signed by the actuary and it must be certified by him to the effect that he has satisfied himself as to the accuracy of the valuations made and of the valuation data But when the actuary is not a permanent officer of the insurer, such abstract has to be signed also by the principal officer of the insurer and the actuary concerned should sign a statement in the abstract showing what precautions he has taken to ensure the accuracy of the data [1]

(*i*) *Statements to accompany the abstract* —The following tabular statements shall accompany every abstract, namely,—

(*a*) a consolidated revenue account in Form G for the intervaluation period *i e*, the period of the valuation date concerned from the valuation date of the last preceding valuation ,

(*b*) a summary and valuation of the policies included at the valuation date in the class of business to which the abstract relates in Form H,

(*c*) a valuation balance-sheet in Form I,

(*d*) a statement of additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance for the intervaluation period in Form DDD,

(*e*) a statement of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs 1 000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50 and payable for 20 years and of endowment insurance policies maturing at the age of 55 in Form J and

(*f*) a statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose

(*ii*) *What the abstract shall show* —Besides the statements above referred to every abstract must show amongst others the following

(1) The valuation date ,

(2) The general principles and full details of the methods adopted in the valuation of each of the various classes of insurance and annuities as shown in Form H stated in (*b*) above ,

(3) The table of mortality used and the rate of interest assumed in the valuation ,

(4) The basis adopted in the distribution of profits as between the insurer and policy-holders ,

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1 See Regulations 4 and 5 in Part II and Regulation 4 in Part I of the Fourth Schedule

(5) The general principles adopted in the distribution of profits among policy-holders ,

(6) The total amount of profits arising during the intervaluation period, and specimens of bonuses allotted as a result of the valuation to policies for one thousand rupees ,

(7) The proportion of annual premiums as bears to the total of the annual premiums to future expenses and profits, and

(8) The average rates of interest yielded by the assets, whether invested or not constituting the life insurance fund for each of the years covered by the valuation date

7 Periodicity of the investigation and Controller's power thereto —Normally, an investigation into the financial condition and valuation of liabilities of an insurer doing life insurance business or miscellaneous insurance business have to be made in accordance with the provisions of this section once at least in ev ry three years Under the Indian Life Assurance Companies Act, 1912, such abstract was to be made once in every five years or at such sl orter intervals as could have been prescribed by the instrument constituting the company or by its regulations or by-laws [1] Under the English Insurance Companies Act, 1958, every insurance company transacting life, industrial assurance or bond investment business is also required in every five years, or at such shorter intervals as may be required by the instrument cons tituting the company or by its regulations or by-laws to cause an investigation to be made into its financial condition, including a valuation of its liabilities by an actuary [2]

But in consideration of circumstances of any particular insurer the Controller has been invested with the power to extend such period by a year only, that is to say, the Controller has the discretion, in consideration of circumstances of any particular insurer to allow him to have the said investigation to be made as at a date not later than four years from the date as at which the previous investigation was made

(i) *Last date as at which first investigation is to be made* —The last date as at which the first investigation under this section has to be made after the commencement of the Insurance (Amendment) Act 1950, in respect of an insurer carrying on insurance business in India at the commencement of the said Act has been provided for in second proviso to sub section (1) of this section Such last date of the first investigation has been fixed as at (*a*) the 31st day of December, 1950, (i) where the last investigation was made before 31st day of December 1946, but not more than five years before the commencement of the said Act or (ii) where such last investigation was made after the 30th day of December but before the 31st day of December, 1947 and such valuation disclosed a deficit in the life insurance fund (*b*) 31st day of December 1951, where the last investigation was at a date (i) after 30th December, 1946 but before 31st December 1947 disclosing no deficit in the life insurance fund or (ii) after 30th December, 1946 but before 31st December, 1948, and (*c*) 31st day of D cember, 1952 where the last investigation was made as at any date after 30th December, 1948 but before the 1st day of January, 1950

(ii) *Last date of first investigation where no investigation has been made* — Provisions have also been made in case of an insurer who has not caused any

1 S 8 of the said Act now repealed

2 S 5 (1) of the said Act.

such investigation prior to the commencement of the said Amendment Act in third proviso to sub-section (1) of this section In the case of such an insurer the date of the last investigation would be taken as the date when he commenced the life insurance business and disclosing no deficit in the life insurance fund In any case the last date of the first investigation under this section since the commencement of the said Amendment Act must not be at a date beyond five years from the date of the last investigation or from the date when the insurer commenced the life insurance business in India, as the case may be

8 **Procedure in cases of other investigations** sub section (2)— To cause an investigation to be made, once in every three years, by an actuary into the financial condition of the life insurance business and also a valuation of its liabilities is a statutory obligation of every insurer doing life insurance business in India It is also his statutory obligation to prepare an abstract of the report of the actuary made on such investigation to him But investigation into the financial condition of the insurer can also be made for the purposes of (*i*) distributing profits or (*ii*) making public the results of such investigation Even in such cases it is obligatory on the insurer to prepare an abstract of the report of such investigations in conformity with the provisions of sub-section (1) of this section But in such cases the obligation of causing the said investigation to be made once in every three years does not arise Such investigation can be caused to be made at any other time whatever

A similar provision is also to be found in the English Insurance Companies Act, 1958, thus, when at any other time an investigation is made into the financial condition of a company transacting life insurance or bond investment business with a view to the distribution of profits or the results of which are to be made public, the company must cause an abstract of the actuary's report to be made in the prescribed form [1]

9 **Certificate to be appended to abstract sub-section** (3)—Every abstract of the report of the actuary made in respect of his investigation into the financial condition of the life insurance business including a valuation of liabilities thereto either under sub-section (1) or under sub-section (2) of this section must be appended to by a certificate which has to be signed by the principal officer of the insurer The certificate must be to the effect that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of investigation [2]

10 **Statement to be appended to abstract sub section** (4)—There shall be appended to every abstract made either in terms of sub section (1) or in terms of sub-section (2) of this section a statement of the life insurance business in force at the date to which the accounts of the insurer are made up for the purposes of such abstract Such a statement must conform to the requirements of Part II of the Fifth Schedule and must be prepared in accordance with the regulations contained in Part I of that Schedule [3] But when the investigation referred to in those sub sections is made annually, the statement need not be appended every year but it shall be appended at least once in every three years

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1 S 5 (1) of the said Act for forms *see* Insurance Companies (Forms) Regulations 1958 Schedule IV

2 *See* also Note 6 *supra*

3 *Ibid.*

11 Investigation made as at a date other than the expiration of the year of account, procedure sub-section (5) —In case of an investigation into the financial condition of an insurer made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by sub sections 11 and 12 of the Act This sub-section provides for the contingency of having an investigation being caused to be made in the middle of the calendar year or at a date prior to the date of the preparation of accounts and balance-sheet of the insurer and they are audited by the auditor of the insurer In such a case it is essential that the accounts, namely, profit and loss account, profit and loss appropriation account, revenue account and balance sheet must be prepared and audited from the date of the last audited accounts up to the date at which the said investigation is made The object of having the accounts and balance-sheet prepared and audited is that the financial condition of the life insurance business and valuation of the liabilities thereto and the abstract prepared therefrom would present a complete picture of the financial position of the insurer

12 Investigation in respect of any sub-class of miscellaneous insurance, sub-section (6) —Sub-section (6) of this section makes provisions for an actuarial report and abstract as provided under this section being made applicable to any class of miscellaneous insurance business But before the provisions of this section are made applicable to miscellaneous insurance business it would be seen whether any sub-class of such insurance business is prescribed under sub-section (1) of section 10 of the Act, that is to say, whether the insurer keeps a separate account of all receipts and payments in respect of such sub class Presumably the provisions of this section cannot be made applicable to that sub-class which consists of insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which, if a claim arises, the insurer's liability to pay benefit ceases within one year of the date on which the claim arose

When the provis ons of this section are made applicable to any sub-class of miscellaneous insurance business, the Controller has been invested with the power to modify and vary the regulations in Part I of the Fourth and Fifth Schedules and the requirements of Part II of those Schedules with a view to their application to that sub-class of insurance business

The Controller has also been given the power to exempt any insurer from the operation of this sub-section in respect of that sub-class of insurance business otherwise amenable to this sub-section, when he is satisfied that the number and amount of the transactions of that sub-class of insurance business is so small as to render periodic investigation and valuation being caused and made unnecessary

Register of Policies and Register of Claims

14 Every insurer, in the case of an insurer specified in sub-clause (*a*) (ii) or sub-clause (*b*) of clause (9) of section 2 in respect of all business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him shall maintain—

(a) a register or record of policies, in which in respect of every policy issued by the

name and address of the policy-holder, the date when the policy was effected and a record of any transfer, assignment or nomination of which the insurer has notice, and

(*b*) a register or record of claims, in which shall be entered, every claim made together with the date of the claim, the name and address of the claimant and the date on which the claim was discharged, or, in the case of a claim which is rejected, the date of rejection and the grounds therefor

SYNOPSIS

1 *Applicability*
2 *Maintenance of registers, a statutory obligation*
3 *Contents of registers*
4 *"Policy," meaning of*
5 *'Policy-holder,' meaning of*
6 *"The policy was effected," meaning of*
7 *"Transfer, assignment or nomination," meaning of*
(1) *when an insurer is said to have notice*
8 *"Claim," meaning of*
9 *Claim discharged or rejected*
10 *Entries in the registers, whether conclusive*

1 Applicability—The provisions of this section are applicable both to Indian and non-Indian insurers A difference has been made as to the keeping of register regarding business in India or elsewhere and business in India alone Indian insurers and those domiciled in India or having their principal place of business in India are required to keep the registers in respect of all the business carried on by them whether in India or elsewhere while other insurers are required only to maintain the registers of their business transacted in India alone This section has also been applied to the Life Insurance Corporation of India

2 Maintenance of registers a statutory obligation—The maintenance of the registers under this section are obligatory Two kinds of registers are to be maintained under this section, namely (i) register of policies or record of policies, and (ii) register of claims or record of claims Indian insurers and insurers domiciled in India or having their principal place of business in India should maintain in these registers records pertaining to the whole of the insurance business transacted by them while other insurers should keep records only of the business transacted by them in India Besides these two registers another statutory register *viz* register of insurance agents has to be maintained by them according to the provisions of section 43 of the Act

Under the English Insurance Companies Act 1958 every insurance company not registered under the Companies Act 1948 shall keep a shareholders' address-book providing therein the names places of abode and description of shareholders in alphabetical order The book will be open to inspection without any charge by every shareholder and every shareholder or policy-holder is entitled to a copy on payment of a prescribed copying fee[1] An insurer incorporated under the Companies Act, 1956 is also required to keep in one or more books a register of its members wherein the name, address and occupation of the member the date when he was entered in the register as a member and the date at which he ceased to be a member have to be entered[2]

1 S 22 of the Act.

2. S 150 Companies Act 1956

A policy contains four main parts, *viz*, (*i*) the recitals, (*ii*) the operative words, (*iii*) the special particulars, and (*iv*) the general conditions The recitals in a policy are important because they may operate as estoppel to preclude the insurers from disputing a fact recited,[1] and they may also assist in resolving a doubt as to the meaning of the operative words[2] The operative words define the nature and scope of the risk insured[3] The special particulars state the name, address and occupation of the assured, the subject matter of the insurance, the amount of insurance, the period of insurance, the premium and similar matters[4] The general conditions cover a variety of matters, such as giving notice of claim or a potential claim, arbitration clause the respective rights of the insurer and the insured to cancel the policy and the like

A policy of insurance is subject to the same general rules of interpretation as any other written contract[5] A policy ordinarily is to be construed liberally in favour of the insured and strictly as against the insurer, or, as more fully stated, if the language employed is ambiguous, or there is doubt or uncertainty as to its meaning and it is fairly susceptible of two interpretations, one favourable to the insured and the other favourable to the insurer, the former will be adopted But this rule is to be read subject to this that the language used in a policy should be construed according to its plain and ordinary meaning and the contract contained in the policy should be construed as a whole, and if possible and practicable, all its parts are to be harmonized, and each part given force and effect[6]

5 "Policy holder," meaning of —The expression 'policy holder' means a policy-holder as defined in sub-section (2) of section 2 of the Act[7]

6 "The policy was effected,' meaning of —The date when the policy was effected may mean (*i*) when the letter of acceptance was issued, or (*ii*) when the first premium was received, or (*iii*) when the policy was signed and sealed But the expression "the policy was effected" should mean that the insurer and the insured had agreed upon every material term, such as the risk its duration the premium and the amount of the insurance That is to say there must be a *consensus ad idem*, *i e* there must be an express agreement or the circumstances must be such as to admit of a reasonable inference that the parties were tacitly agreed[8] But where the proposer and insurers are at cross purposes the result is *non est factum* and if premiums have been paid in the mistaken belief that there was an effective contract of insurance, they are recoverable by the person who has paid them on a count of money had and received to that person s use[9]

A contract of insurance like any other contract is completed by an offer made by one party to the other and accepted by the latter, prepayment of

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1 *Roberts* v *Security Co* (1897) 1 Q B 111 C A *see* also *Equitable Fire and Accident Office* v *Ching Wo Hong* (1907) A C 96 (P C) *Anglo-Californian Bank* v *London and Provincial Marine and General Insurance Co Ltd* (1904) 10 Com Cas 1

2 *Notman* v *Anchor Assurance Co* (1858) 4 C B N S 476

3 *See* Halsbury s Laws of England Vol 22 pp 209 and 211

4 *Ibid* p 209

5 *Smith* v *Accident Insurance Co* (1870) L R 5 Exch 302 *see* also *Thurston* v *Commercial Union Assurance Co* (1926) Ch 886 for interpreting ambiguities in a policy; *Wood* v *Dwarris* (1856) 11 Exch 493; *Griffiths* v *Fleming* (1909) 1 K B 805 C A *Collett* v *Morrison* (1851) 9 Hare 162 for finding out what the real contract was *see* also Halsbury s Laws of England Vol 11 pp 381 *et seq* and also Vol 22 pp 211 216

6 *See* Halsbury s Laws of England Vols 11 and 22 and 44 C J S pp 1166-1196

7 *See* Note 20 under section 2 at pp 94-95

8 *Ferguson* v *Co-operative Insurance Society* 1 A C (No 9) Ref 1930 p 43

9 *Johnston* v *Prudential* (1946) 1 A C Ref 1938-49 p 59

premium is not in law a condition precedent to the contract of insurance Even when a proposal is accepted subject to the condition that there shall be no insurance until the first premium is paid, it does not necessarily operate to prevent there being a binding agreement before the payment of the premium [1] It is almost a common practice of all insurers, except marine, to stipulate that the contract shall not begin to take effect until the premium has been paid Similarly, if a proposal for insurance is accepted on condition that there will be no insurance till the first premium is paid, there is no contract but a counter-offer and the insurance company may refuse the premium if there is any material change in fact, constituting the risk Material change in this connection means any change of circumstance which makes any statements in the proposal ceasing to be true or which the assured would have been bound to disclose under the doctrine of *uberrima fides* [2] But the delivery of a policy without receiving the payment of premium raises a presumption that a credit is intended and is a waiver of the condition of prepayment of the premium [3] So also where it is clear that the acceptance is intended to be identical with the proposal, the contract is complete notwithstanding some trivial inadvertent variance [4] Likewise, where a company has issued a policy and accepted premiums, it will not be allowed to deny the existence of the contract on the ground that the person claiming under the contract has not signed the proposal [5] Similarly, where the policy recites that the premium has been paid although in fact it has not been paid, even then there is a waiver of the stipulation and the contract becomes a concluded one [6] So also wher a contract of marine insurance was effected through an insurance broker who prepared a slip containing the particulars and showing the risk and the dependant initialled the slip but the broker omitted to put forward a policy Upon an action on the policy it was held that there was an unconditional contract to insure and the dependant was liable for the loss [7]

7 **Transfer, assignment or nomination, meaning of** —A transfer of property either movable or immovable can be made or effected (i) by act of parties, (ii) by operation of law and (iii) by or in execution of a decree or order A transfer by act of parties has been dealt with by the transfer of Property Act (IV of 1882) A transfer by operation of law refers to transfers by succession, forfeiture, insolvency and escheat A transfer by or in execution of a decree or order is an actual transfer made by the court But a transfer sanctioned by a court, such as a transfer by the Official Liquidator of a company which has been wound up or sale by the Official Receiver is not one either by operation of law or by or in execution of a decree or order of a court

A policy, as has been said already, is a property and is a chose in action and hence it can be the subject-matter of transfer in any of the three methods mentioned above When a policy is transferred 'by act of parties', such transfer will be governed by the provisions of the Transfer of Property Act, when it is transferred 'by operation of law', the law prescribing or sanctioning such

1 *Newcastle Fire v Macmorran* (1815) 3 Dow 255 *General Accident v Cronk*, (1901) 17 T L R 233

2 *Looker v Law Union and Rock Insurance Co Ltd* (1923) 1 K B 554 *Harrington v Pearl Life* (1914) 30 T L R 613 *Canning v Farquhar* (1886) 16 Q B D 727, *Sickness and Accident v General Accident*, (1892) 19 R 977 *South British Insurance Co v Simson* 30 Bom L R 745 *Ocean Accident and Guarantee Corporation Co, Ltd v D K Patkar* 1935 Bom 236

3 *Universal Life Insurance Society In re* 23 Cal 320

4 *Colonial Insurance Co v Adelaide Marine Insurance Co*, 12 A C 128

5 *Pearl Life Assurance Co v Johnston* (1909) 2 K B 288

6 *Roberts v Security Co* (1897) 1 Q B 111 doubted in *Equitable Fire and Accident Office Ltd v Ching Wo Hong* (1907) A C 96

7 *Thompson v Adams*, (1889) 23 Q B D 361

transfer will govern the case and when it is effected 'by or in execution of a decree or order', it is also governed by the law relating to the execution of the decree or order concerned Apart from the provisions made in Chapter VIII of the Transfer of Property Act, section 38 of the Insurance Act, 1938, has made provisions for assignment and transfer of insurance policies Section 39 of the same Act has also provided for nomination by policy holder [1]

(*i*) *When an insurer is said to have notice* —The Transfer of Property Act contemplates two classes of notice, *viz* , (*a*) actual notice, and (*b*) constructive notice, To be a binding notice, actual notice must be definite information given by a person interested in the thing in respect of which the notice is issued He is not bound to attend to vague rumours or statements by mere strangers [2]

"The doctrine of constructive notice" as observed by Lord Brougham, "depends upon two considerations, first, that certain things existing in the relation or the conduct of parties, or in the case between them, beget a presumption so strong of actual knowledge that the law holds the knowledge to exist, because it is highly improbable it should not, and next, that policy and the safety of the public forbids a person to deny knowledge while he is so dealing as to keep himself ignorant or so as that he may keep himself ignorant, and yet all the while let his agent know, and himself, perhaps, profit by that knowledge "[3] Provisions have been made in sub-sections (2) and (3) of section 38 of the Insurance Act in regard to notice of assignment and transfer of insurance policies So also section 39 of the same Act provides the manner by which a nomination can be made effectual [4]

8 **"Claim," meaning of** —When the insurer has got to perform his part of the promise, that is, when he has got to pay under the policy when the event happens it is in insurance parlance known as the "claim" Before any claim can be made against an insurer it is incumbent upon him who prefers such a claim under a policy to bring to the notice of the said insurer that a claim has in fact arisen on the happening of the uncertain event and strict proof is required to substantiate same In practice the claim is made upon a printed form supplied by the insurer and indicating the nature of the particulars required The giving of proper particulars and proofs is usually made a condition precedent to any right of recovery for the loss [5] "Full particulars" required by a condition means "the best particulars which the assured can reasonably give" [6] These particulars may vary according to the nature of the insurance and whether such particulars as given are sufficient or not is a question of degree and must depend upon the facts and circumstances of each particular case But in any case the claimant cannot be said to have performed his duty adequately when he has failed to furnish the best particulars which could be furnished in the circumstances [7] But a statement in the proposal as to the method of proving the loss does not preclude

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1 For further discussion on the subject *see* Notes under sections 38 and 39 *post*

2 See *Ashoj Hazara* v *Chaturbhuj* 50 All 328 1928 All L J 93 ; *Lloyd* v *Banks* (1868) 37 L J Ch 881 ; *North British Insurance Co* v *Hallett* 35 Beav 317

3 *Kennedy* v *Green* (1834) 40 E R. 266 at p. 274

4 *See* Notes under sections 38 and 39 *post*

5 *Welch* v *Royal Exchange Assurance* (1939) 1 K B 294 (1938) 4 All E R 249

6 *Mason* v *Harvey* (1853) 8 Ex 819

7 *Huddle* v *National Fire and Marine Insurance Co* (1896) A C 372 ; C. *see* also *Worden* v *Hood* 6 T R 710 *Elliot* v *Royal Exchange* (1876) L. R. 2 Ex 237

the assured from proving his loss by another method [1] Although non-performance of the condition of giving proof may be a defence to the insurer but it does not preclude the assured from taking proceedings to enforce the policy [2]

9 Claim discharged or rejected —The claim is said to be discharged when payment under the policy is made to the person entitled, that is to say, (*i*) to the assured, or (*ii*) his legal representative or (*iii*) to his assignee, or (*iv*) receiver in insolvency as the case may be The insurer, on the other hand, is entitled on payment to receive a legal discharge from his liability under the policy In case of conflicting claims the insurer is discharged from liability by paying the moneys into court [3]

The claim is said to be rejected when the claim is not admitted or the payment under the policy is disputed and the payment thereunder is not made It has been held that it is not *ultra vires* of a company to make an *ex gratia* payment to a policy-holder upon a loss not technically within the policy or to his children or dependants on compassionate grounds even though the admissibility of the claim is otherwise barred [4]

10 Entries in the registers whether conclusive —Where the question arises as to whether at the date of the loans granted on certain policies there was any effective policy in existence, the statement of a surrender value against a policy in the books of the company by no means proves that the policy is current at the date of the entry In this respect, the entry in the Policy Register would be conclusive [5]

Submission of returns

15 (1) The audited accounts and statements referred to in section 11 or sub-section (5) of section 13 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Controller, in the case of the accounts and statements referred to in section 11 or sub-section (5) of section 13 within six months and in the case of the abstract and statement referred to in section 13 within nine months from the end of the period to which they refer

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months

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1 Hunsofsky v *Asrop and Natn General Assurance Association* (1919) 35 T L R 283

2 *Brunsden* v *Accidental Death Insurance Co* (1861) 1 B and S 782 *Cowell* v *Yorkshire Provident Life Assurance Co* (1901) 17 T L R 452 For further discussion *see* Notes under sections 46 47 and 47A *post*

3 See *Pennell* v *Harborne* (1848) 11 Q B 368 in case of joint policy holders *Randall* v *Lithgow* (1884) 12 Q B D 525 in case of garnishee order *Muldrey* v *Folgham* in case of personal representative *O Reilley* v *Prudential Assurance* (1934) Ch 519 payment to beneficiary

4 See *Tondon* v *The Royal* (1864) 2 H and M 135 and MacGillivray on Insurance Law Vol 1 pp 237 238

5 *Controller of Insurance* v *H C Das*, 1957 Cal 387

(2) Of the four copies so furnished one shall be signed in the case of a company by the chairman and two directors and by the principal officer of the company and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual by the insurer himself and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be

(3) Where the insurer's principal place of business or domicile is outside India, he shall forward to the Controller along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue account and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Returns under the section*
5 *Time-limit for filing the returns*
6 *Extension of time for filing the returns*
7 *Authentication of the returns*
8 *Returns by foreign insurers*
9 *Other returns*

1 Legislative changes.—(*a*) The words and figures "or sub-section (2) of section 13" occurring in sub-section (1) were inserted by Act VI of 1946

(*b*) The words "Controller" and "India" occurring in the section were substituted respectively by Act XLVII of 1950 and Act LXII of 1956

(*c*) The words 'within nine months" occurring in sub-section (1) were substituted for the words 'within six months" by Act XIII of 1941

(*d*) The words "the Superintendent of Insurance may extend the time allowed for furnishing the abstract and statement referred to in section 13 by a period not exceeding three months' previously occurring in the section were omitted by Act XIII of 1941

(*e*) The words "and one shall be signed by the auditor as the case may be" occurring in sub-section (2) were inserted by Act VI of 1946

2 Applicability.—The provisions of this section as to submission of returns to the Controller of Insurance apply to insurers domiciled or having their principal place of business outside India as well as to foreign insurers besides the Indian insurers Sub-section (3) of this section makes special provisions for foreign insurers to whom the provisions of section 16 (*post*) do not apply The section also applies to all descriptions of insurers, whether

they are companies incorporated under any Act, or partnership firms or individuals The section has been applied to the Life Insurance Corporation of India with certain modifications

3 **Object and scope**—The object of filing the returns as enjoined under this section with the Controller of Insurance is to make public the audited accounts, the balance-sheet, profit and loss account, revenue account and the actuarial report and abstract of every insurer The other object seems to be that the Government can watch the activities of the insurers in their business enterprise through these returns and can make effective checks upon derelict insurers in the matter of complying with the requirements of the Insurance Act and the rules made thereunder

This section provides a machinery for filing the returns with the Controller of Insurance, about the details of such returns, the period within which the said returns are to be filed and the manner in which the said returns are to be authenticated It also prescribes the procedure in case of foreign insurers to whom section 16 of the Act does not apply, as to how, what and the manner in which the said returns are to be filed with the Controller The Controller has also been given powers regarding these returns in section 21 of the Act [1] Similar provisions as in this section are made in section 8 of the English Insurance Companies Act, 1958 for depositing the accounts, balance-sheet abstract or statement at the Board of Trade within a period prescribed in that section

4 **Returns under the section**—Returns under this section for the purposes of filing with the Controller of Insurance are printed copies of (*i*) audited accounts which will include (*a*) the balance-sheet, (*b*) profit and loss account, (*c*) revenue account, and (*d*) profit and loss appropriation account, (*ii*) the statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management, (*iii*) the report on the affairs of the business during the period to which the accounts relate, and (*iv*) the abstract of the report of the actuary made upon an investigation into the financial condition of the life insurance business or the miscellaneous insurance business including a valuation of the liabilities thereto, such abstract will include (*a*) a certificate signed by the principal officer of the insurer in terms of sub-section (3) of section 13 and (*b*) the statement of the life insurance business in force at the date to which the said abstract relates in terms of sub-section (4) of section 13 Four such printed copies of the documents referred to above are to be filed with the Controller of Insurance

Under the English Act also four printed copies of every account, balance-sheet abstract or statement except the statement of business by Committee of Lloyd's are to be deposited at the Board of Trade

5 **Time-limit for filing the returns**—Normally the time-limit for filing the returns under this section with the Controller of Insurance is provided as follows

(*a*) Where the returns relate to the accounts and statement, namely, (*i*) the audited accounts, *i e* the balance-sheet, profit and loss account, the revenue account and the profit and loss appropriation account (*ii*) the statements containing the names descriptions and occupations of and the directorships held by the persons in charge of the management of the business and (*iii*) the report on

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1 *See* Notes under section 21 *post*

the affairs of the business during the period to which the accounts relate, they are to be filed within six months from the end of the period to which they refer Thus if the accounts relate to the calendar year ending at 31st December, these returns are to be filed within the month of June of the succeeding year, and

(*b*) where the returns relate to the abstract of the report of the actuary including the certificate of the principal officer of the insurer and the statement of the life insurance business in force at the date to which the accounts were made up for the purpose they are to be filed within nine months from the end of the period to which they refer Thus, if the abstract refers to the end of any calendar year, the returns are to be filed within the month of September of the succeeding year Under the English Act the time limit for filing these returns has been made uniform, *i e*, they are to be filed within six months after the close of the period to which the account, balance-sheet, abstract or statement relates

6 Extension of time for filing the returns —Provisions for extending the time for filing the returns which are to be filed within six months have been made in the case of two classes of insurers, *viz*, (*i*) those having their principal place of business or domicile outside India and (*ii*) those constituted incorporated or domiciled in India but also carrying on business outside India These insurers must have an extension of time to file those returns for a period of three months more, *i e* they can file those returns, if they desire to extend the period of six months, within nine months from the end of the period to which the accounts refer The provisions in the proviso to sub-section (1) are mandatory in this regard Even if further extension be required after the expiry of nine months, the Central Government has been given the direction to extend such time by a further period not exceeding three months that is to say, these insurers can file those returns within twelve months from the end of the period to which the accounts refer when the Central Government grants them extension for a further period of three months

But no provisions have been made for extending the time of filing the returns of actuarial abstract and statement which are to be filed within nine months from the end of the period to which the abstract refers Such returns are to be filed within nine months in case of all insurers as provided in the section

Under the English Act, the Board of Trade has been authorised to grant extension of time for filing the returns for such period not exceeding three months if in any case it is made to appear to it that the circumstances are such that a longer period than six months should be allowed

7 Authentication of the returns sub-section (2) —Sub-section (2) of this section provides how the signatures in the returns are to be made and by whom Of the four printed copies to be filed with the Controller, one must be signed that is all the four printed copies of the returns need not be signed If one of such copies is signed that would be a sufficient compliance with the requirements of this sub-section When the insurer is a company, one of the said printed copies of the returns is to be signed by the chairman two directors and the principal officer of the company but where such company has a managing director or managing agent the said copy has also to be signed by that director in addition to two other directors or the managing agent The signature of the managing agent after the commencement of the Insurance Act 1938, or where such appointment was made before such commencement

of the Act after the expiry of three years from such commencement of the Act does not arise as section 32 of the Act has put limitation on the appointment of managing agent for the conduct of the insurer's business

When the insurer is a firm, such printed copy of the returns has to be signed by two partners of the firm and where the insurer is an individual such copy has to be signed by the insurer himself Besides, another printed copy of the returns must be signed by the auditor who made the audit and the third copy must be signed by the actuary who made the valuation Thus of the four printed copies of the returns, one has to be signed by the insurer in the manner indicated above when the insurer is a company or a firm or an individual, as the case may be the second has to be signed by the auditor who made the audit, and third by the actuary who made the valuation

Under the English Act, of the four printed copies of the returns to be deposited at the Board of Trade, it would be sufficient if one of them is signed by the chairman, two directors and principal officer of the company and where the company has a managing director, by the latter also The signatures of the auditor and the actuary as required under this section are not required under section 8 of the English Act

8 **Returns by foreign insurers sub section (3)** —Sub-section (3) of this section makes provisions evidently for those foreign insurers to whom an exception has been made in the applicability of the provisions in sub section (1) of the succeeding section 16 These insurers are required to file by virtue of the provisions of this sub-section the following documents as returns with Controller of Insurance within the time-limit prescribed in this section

(i) the balance sheet, profit and loss account, revenue account and the valuation reports and valuation statements where such insurer has to file these documents with the public authority of the country in which the insurer is constituted incorporated or domiciled , or

where no such documents are required to be filed,

(ii) a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents , and

(iii) his total income and expenditure during that period Besides

(iv) the accounts referred to in section 11 of the Act, *viz* the balance-sheet, profit and loss account and the revenue account [1]

9 **Other returns** —See notes under section 18, section 19, section 28 section 28A, section 37 and section 82, *post*

Returns by insurers established outside the States

16 (1) Where by the law of the country in which an insurer not being an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and to furnish to a public authority of that country documents of substantially the same nature as the documents to be furnished as returns in accordance with the provisions

1 *See* also Notes under section 16 *post*

of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Controller four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto four certified copies in the English language of each of the following statements, namely,—

(*a*) a statement audited by an auditor or by a person duly qualified under the law of the insurer's country showing the assets held by the insurer in India as at the date of any balance-sheet so furnished ,

(*b*) for each class or sub-class of insurance business for which he is required under sub section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished, prepared in accordance with the regulations, and in the form or forms set forth in the Third Schedule applicable to that class or sub-class of insurance business and similarly audited, showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under the clause of this sub-section,

(*c*) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers, prepared in the manner required by that section, and

(*d*) a declaration in the prescribed form stating that all the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Returns under the section what are, and to whom*
5 *The manner in which and the time within which returns are to be filed sub-section (2)*
6 *Foreign insurers doing insurance business to conform to the laws of the country where they carry on such business*

1 **Legislative changes** —(*a*) The word "Controller" in sub-section (2) has been substituted by Act XLVII of 1950 and the words "four certified copies" occurring in the same sub-section were substituted for the words "four copies" by Act XI of 1939

(*b*) The word "audited" in clause (*a*) of sub-section (2) was inserted by Act XI of 1939 , the words "by an auditor or" in the same clause by Act VI of 1946, and the words "as at the date of any balance-sheet so furnished" in the same clause added by Act XIII of 1941

(*c*) The words "for each class or sub-class a revenue account" occurring in clause (*b*) of sub section (2) were substituted for the words ' for each class of insurance business carried on by him, a revenue account" by Act XIII of 1941 , the words "furnished, prepared in set forth in" in the same clause were inserted by Act VI of 1946 , the words 'that class or sub-class of insurance business" were substituted for the words "that class of business" by Act XIII of 1941 , and the words "and similarly audited" in the same clause inserted by Act XI of 1939

(*d*) Sub-clause (*c*) of sub-section (2) was substituted by Act XIII of 1941

2 **Applicability** —The provisions of this section apply to an insurer constituted, incorporated or domiciled outside India Its provisions do not apply to an insurer specified in sub-clause (*a*) (*ii*) or sub clause (*b*) of clause (9) of section 2 that is, an insurer who has his or its principal place of business or is domiciled in the States or who is a body corporate [not being a person specified in sub-clause (*c*) of clause (9) of section 2] incorporated under any law for the time being in force in the States or a subsidiary company to any such body corporate [1]

3 **Object and scope** —The object of the section is to dispense with the duplication of accounts and abstract when the same have already been made and furnished to the public authority concerned under the provisions of law of the country of origin or domicile of the insurer In such a case, the insurer instead of complying with the provisions of sections 11, 12, 13 and 15 of the Act, has to comply with the provisions of sub-section (2) of this section in respect of his returns to be filed with the Controller of Insurance

This section purports to modify the law relating to the submission of returns as laid down in section 15 with regard to the insurer who has filed the documents with the public authority according to the law of his country of origin or domicile The documents treated as returns under section 15 and the documents filed with the public authority under the law of its country of origin or domicile should, if not identical, be substantially the same in nature, otherwise the provisions of this section will not be made applicable

An insurer whose country of origin or domicile is in England is required under the Insurance Companies Act, 1958 to prepare accounts balance-sheet, abstract and statement under the said Act and to have them printed and to deposit same at the Board of Trade within six months after the close of the period to which the account, balance-sheet, abstract or statement relates So also an insurer having its place of origin or domicile in Northern Ireland is required under the Assurance Companies Act (Northern Ireland), 1924, to prepare accounts, balance-sheet, abstract statements or other documents and to deposit with the Ministry of Commerce for Northern Ireland Similarly,

1 *See* Note 5 under section 2 at pp 21 30 *supra*

of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Controller four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto four certified copies in the English language of each of the following statements, namely,—

(a) a statement audited by an auditor or by a person duly qualified under the law of the insurer's country showing the assets held by the insurer in India as at the date of any balance-sheet so furnished,

(b) for each class or sub-class of insurance business for which he is required under sub-section (1) of section 10 to keep a separate account of receipts and payments, a revenue account for the period covered by any account so furnished, prepared in accordance with the regulations, and in the form or forms set forth in the Third Schedule applicable to that class or sub-class of insurance business and similarly audited, showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section,

(c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers prepared in the manner required by that section, and

(d) a declaration in the prescribed form stating that all the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Powers under the section and what are not*
5 *The manner in which and the time within which returns are to be made sub-section (2)*
6 *Foreign insurers doing insurance business to conform to the practice of the country where they carry on such business*

1 **Legislative changes** —(*a*) The word "Controller" in sub-section (2) has been substituted by Act XLVII of 1950 and the words "four certified copies" occurring in the same sub-section were substituted for the words "four copies" by Act XI of 1939

(*b*) The word "audited" in clause (*a*) of sub-section (2) was inserted by Act XI of 1939 , the words "by an auditor or " in the same clause by Act VI of 1946, and the words "as at the date of any balance-sheet so furnished" in the same clause added by Act XIII of 1941

(*c*) The words "for each class or sub-class a revenue account" occurring in clause (*b*) of sub-section (2) were substituted for the words ' for each class of insurance business carried on by him, a revenue account" by Act XIII of 1941 , the words "furnished, prepared in set forth in" in the same clause were inserted by Act VI of 1946 , the words "that class or sub-class of insurance business" were substituted for the words "that class of business" by Act XIII of 1941 , and the words "and similarly audited" in the same clause inserted by Act XI of 1939

(*d*) Sub-clause (*c*) of sub-section (2) was substituted by Act XIII of 1941

2 **Applicability** —The provisions of this section apply to an insurer constituted incorporated or domiciled outside India Its provisions do not apply to an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, that is, an insurer who has his or its principal place of business or is domiciled in the States or who is a body corporate [not being a person specified in sub-clause (*c*) of clause (9) of section 2] incorporated under any law for the time being in force in the States or a subsidiary company to any such body corporate [1]

3 **Object and scope** —The object of the section is to dispense with the duplication of accounts and abstract when the same have already been made and furnished to the public authority concerned under the provisions of law of the country of origin or domicile of the insurer In such a case, the insurer instead of complying with the provisions of sections 11, 12, 13 and 15 of the Act, has to comply with the provisions of sub-section (2) of this section in respect of his returns to be filed with the Controller of Insurance

This section purports to modify the law relating to the submission of returns as laid down in section 15 with regard to the insurer who has filed the documents with the public authority according to the law of his country of origin or domicile The documents treated as returns under section 15 and the documents filed with the public authority under the law of its country of origin or domicile should, if not identical, be substantially the same in nature, otherwise the provisions of this section will not be made applicable

An insurer whose country of origin or domicile is in England is required under the Insurance Companies Act, 1958, to prepare accounts balance-sheet, abstract and statement under the said Act and to have them printed and to deposit same at the Board of Trade within six months after the close of the period to which the account, balance-sheet, abstract or statement relates So also an insurer having its place of origin or domicile in Northern Ireland is required under the Assurance Companies Act (Northern Ireland), 1924, to prepare accounts balance-sheet abstract statements or other documents and to deposit with the Ministry of Commerce for Northern Ireland Similarly,

1 *See* Note 5 under section 2 at pp 21 30 *supra*

under some statutes in the United States of America insurance companies are required annually, semi-annually or on demand to furnish to the Superintendent of Insurance or other proper officer statements of their condition in prescribed forms To these insurers and similar others it seems that the provisions of this section are applicable and in filing their returns with the Controller of Insurance, they should also conform to the provisions of sub-section (2) of this section The provisions of section 15 as to the filing of returns will not apply to them The test for determining whether the provisions of this section or section 15 would be applicable lies in the fact of the accounts, balance-sheet, abstract or statements filed with the authorities concerned of the country of origin or domicile being in nature substantially the same, with those contemplated under section 15 of the Act

4 **Returns under the section, what are sub-section (2)**—The returns contemplated under sub-section (2) as constituting returns under this section will consist of the following documents, namely,—

(*a*) every balance-sheet, account, abstract, report and statement supplied to the public authority, *e g*, Board of Trade as in England, Ministry of Commerce as in Northern Ireland and Superintendent of Insurance or other proper officer as in the United States of America ,

(*b*) an audited statement showing the assets held by the insurer in India as at the date of any balance-sheet so furnished ,

(*c*) a revenue account similarly audited for the period covered by the account furnished, prepared in accordance with the regulations and in the form or forms set forth in the Third Schedule showing separately business in respect of each class or sub-class transacted by the insurer in India with details ,

(*d*) an abstract of the valuation report of all business transacted in India in each class or sub-class prepared in the manner required by section 13 , and

(*e*) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly either from head office or from any other source outside India have been shown in the revenue accounts except such sums as properly appertain to the capital accounts

5 **The manner in which and the time within which returns are to be filed sub-section (2)**—The number of copies to be filed with the Controller of Insurance shall be three and must be certified copies if any language other than English is used in respect of the documents and must be certified by a practising Chartered Accountant as defined in clause (5) of section 2 of the Chartered Accountants Act 1933

The statement of accounts must be audited by a person who is qualified under the law of the insurer's country to act as auditor of companies registered under the Indian Companies Act 1913 and must be filed within six months

the period to which they refer But the insurers shall have the benefit of the extension of the said period of six months by a further period of three months and when the Central Government so allows the extended period of three months, *i e*, the period of nine months in the aggregate, may be extended for another three months more

6 Foreign insurers doing insurance business to conform to the statutes of the country where they carry on such business —A foreign insurance company may carry on insurance business within the limits of a State unless the statute of that country prohibits it However, as a matter of comity and of right, it should not and must not do such business without complying with the regulations prescribed by the statutes When there are specific provisions applicable to foreign companies, they may do business only in compliance with those provisions [1]

The State has power to require foreign companies to accept conditions different from those imposed on domestic insurers and to prescribe conditions for foreign insurance companies different from those prescribed for foreign croporations engaged in other lines of business [2]

Exemption from certain provisions of the Indian Companies Act 1913

17 Where an insurer, being a company, incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1886, or under any Act repealed thereby, in any year furnishes his balance-sheet and accounts in accordance with the provisions of section 15, he may at the same time send to the Registrar of Companies copies of such balance-sheet and accounts , and where such copies are so sent, it shall not be necessary for the company to file copies of the balance-sheet and accounts with the Registrar as required by sub-section (1) of section 134 of the first mentioned Act and such copies so sent shall be chargeable with the same fee and shall be dealt with in all respects as if they were filed in accordance with that section

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Returns under the Companies Act*
5 *Filing fees under the Companies Act*
6 *Obligationso f foreign companies under the Companies Act*

1 Legislative changes —(*a*) The words and figures "or under the Indian Companies Act 1882 repealed thereby" occurring in the section were inserted by Act XI of 1939 the words "his balance-sheet and accounts' for the words "his accounts and balance-sheet', the words "copies of such balance-sheet and accounts" for the words "a copy of such accounts and balance-sheet', the words "where such copies are so sent" for the words "where such copy is so sent" the words 'to file copies of the balance-sheet and accounts" for the words "to file a balance-sheet", and the words "such copies so sent" for the words 'the copy of the accounts and balance-sheet so sent' were substituted by Act XI of 1939

1 See *U.S Fidelity and Guaranty Co v Linehan* 53 Atlan Rep 956, *People v New York Title and Mortgage Co* 178 N E Rep 661

2. *National Union Fire Insurance Co v Wanberg* 260 U S 71 *State v Fowler* 220 N W 534 *State v Porter*, 294 Pac Rep 363

(*b*) The words "first mentioned Act" were substituted by Act VI of 194

(*c*) The words "shall be chargeable with the same fee and" were ins by Act XI of 1939

2 **Applicability** —The provisions of this section are applicable only to those companies incorporated under the Indian Companies Act, 1913 (VII of 1913) or under the Indian Companies Act 1882 (VI of 1882) or under t Indian Companies Act, 1866 (X of 1866) or under any Act repealed thereby Section 644 of the Companies Act, 1956 (1 of 1956) has rep aled the Indian Companies Act, 1913 (VII of 1913), the Registration of Transferred Compa Ordinance (LIV of 1942), the Indian Companies (Amendment) Act, 1951 (LII of 1951), and the Indian Companies (Amendment) Act 1952 (LI of 1952). Hence the companies incorporated under the Companies Act, 1956 and the companies incorporated under the various Companies Act repealed by th said Act will become amenable to the provisions of this section of the Insura Act, 1938 [1]

3 **Object and scope** —The object of this section is to exempt the companies incorporated under the Companies Act, 1956, from preparing the annual accounts and balance-sheet under section 210 of the said Act (s e 131 of the previous Act) over again when they prepared same in terms of section 11 of the Insurance Act, 1938 Section 616 of the Companies Act, 1956 (section 287 of the previous Act) *inter alia* provides that the provisions of the Companies Act shall apply to insurance companies, except in so far as th said provisions are inconsistent with the provisions of the Insurance Act, 19 (IV of 1938) The provisions make it clear that insurance and other com panies which are governed by special Acts will continue to be governed by those Acts and that such companies will be governed by the provisions of th Bill in so far as those provisions are not inconsistent with those contai in the special Acts governing those companies "[2]

But this section does not exempt the insurance companies incorpora under the Companies Act, 1956 or under the previous Acts repealed th from filing the requisite copies of balance sheet and profit and loss account wi the Registrar of Companies as provided in section 220 of the Compani s Act, 1956 (section 134 of the previous Act) What this section enjoins is that th balance-sheet and the profit and loss account prepared in accordance wi section 11 of the Insurance Act, 1938 and filed with the Controller of Insuranc in terms of section 15 of the said Act if filed with the Registrar of Compani s will be a sufficient compliance with the provisions of section 220 (section 134 of the Companies Act 1956, and the insurance companies incorporated u the Companies Act need not file copies of balance-sheet and accounts under section 220 of the said Act if such copies of the said documents were sen the Registrar of Companies at the time when they were sent to the Con of Insurance under section 15 of the Insurance Act, 1938

4 **Returns under the Companies Act** —Under section 159 of the Companies Act 1956, every company having a share capital has to prepare and file with the Registrar a return within forty two days from the day on which the annual general meeting of the company is held Such return sh contain the particulars specified in Part I of Schedule V as they stood on the day regarding—(*a*) its registered office (*b*) the register of its members (*c*) the

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1 ... S (Amend.) Act, 1950

2 ... Section clause 5 of the B ... Notes to ... section 11" post

register of its debenture-holders, (*d*) its shares and debentures, (*e*) its indebtedness, (*f*) its members and debenture-holders, past and present, and (*g*) its directors, managing directors, managing agents, secretaries and treasurers, managers and secretaries, past and present In case of a company not having a share capital has also to file such return within the said time limit but the return should contain (*a*) the address of the registered office of the company, (*b*) the names of members and the respective dates on which they became members and the names of persons who ceased to be members since the date of the annual general meeting of the immediately preceding year, and the dates on which they so ceased, (*c*) particulars of the directors, its managing agent, its secretaries and treasurers, its manager and its secretary, and (*d*) a statement containing particulars of the total amount of the indebtedness of the company (section 160, Companies Act, 1956) At the same time when the annual report is filed the company should also file three copies of the balance-sheet and the profit and loss account with the Registrar (section 220 of the said Act) The annual report has to be signed both by a director and by the managing agent, secretaries and treaurers manager or secretary of the company, or where there is no managing agent, secretaries and treasurers, manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one A certificate signed by both the signatories of the return stating that the return states the facts correctly and completely has also to be filed along with the said return But the copies of the balance sheet and the profit and loss account need not be signed by a director if they are signed by the managing agent, managing director, secretaries and treasurers manager or secretary of the company, but in their absence they are to be signed by a director of the company

5 **Filing fees under the Companies Act** —The fees chargeable for filing returns with the Registrar of Companies have been mentioned in Schedule X of the Companies Act, 1956 For filing registering or recording any document by the Companies Act required or authorised to be filed registered or recorded, the fees required to be paid under the said Schedule of the said Act are —

(*a*) in respect of a company having a nominal share capital of less than Rs 1,00 000—a fee of Rs 5 ,

(*b*) in respect of a company having a nominal share capital of Rs 1,00 000 or more but less than Rs 5,00,000—a fee of Rs 12 50,

(*c*) in respect of a company having a nominal share capital of Rs 5 00 000 or more but less than Rs 25,00,000—a fee of Rs 20 ,

(*d*) in respect of a company having a nominal share capital of Rs 25 00 000 or more—a fee of Rs 25

(*e*) in respect of a company not having a share capital—a fee of Rs 5

Section 611 of the said Act further provides, amongst others, that if the return is filed after the time specified for its filing an additional fee not exceeding ten times the amount of the fee so specified and as determined by the Registrar shall have to be paid

6 **Obligations of foreign companies under the Companies Act** — Part XI containing sections 591 to 602 of the Companies Act, 1956 makes certain provisions applicable to companies incorporated outside India It is provided in section 594 that every foreign company shall in every calendar year, make out a balance-sheet and profit and loss account according to the

provisions of the Companies Act and deliver three copies of those documents to the Registrar in the English language Along with these copies they should also send to the Registrar three copies of a list in the prescribed form of all places of business established by the company in India as at the date with reference to which the said balance-sheet is made out They should also deliver documents mentioned in section 592 to the Registrar for registration

The test to determine whether a company is a foreign company or not is the place of its incorporation and it does depend on whether the corporators are Indian citizens or are all foreigners A company will be a foreign company even if the corporators are Indian citizens, likewise a company will be an Indian company even if the corporators are all foreigners [1]

A foreign company which has an established place of business within Great Britain is called by the English Companies Act, 1948, an "oversea company" [2] A company is said to have an established place of business in Great Britain if it has a specified or identifiable place at which it carries on business, "a local habitation of its own," *e g*, an office, there must be some "visible sign or physical indication" that the company has any connection with particular premises It is not sufficient if it carries on business through an agent or through a subsidiary company or from an occasional place of business, such as an hotel [3] But many provisions relating to oversea companies under the English Companies Act, 1948, apply to insurance companies doing business within the United Kingdom even though they have no established places of business there [4]

17A Nothing in this Act shall apply to the preparation of accounts by an insurer and the audit and submission thereof in respect of any accounting year which has expired prior to the commencement of this Act, and notwithstanding the other provisions of this Act, such accounts shall be prepared, audited and submitted in accordance with the law in force immediately before the commencement of this Act

This Act not to apply to preparation of accounts etc for periods prior to this Act coming into force

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *"Any accounting year"*

1 Legislative changes —This section was inserted by Act XI of 1939

2 Object and scope —This section has been enacted with the obvious object of overcoming the difficulties of the insurers to prepare the accounts to have them audited and to submit them as returns over again after the commencement of the Insurance Act had not this enactment been made The duties of the insurers to prepare the accounts to have them audited and submit the returns have not altogether been absolved but that they are require

1 See *Janson* v *Driefontein Mines* (1902) A C 484 ; *Gramophone Ltd* v *Stanley* (1908) 2 K B 89 *Attorney-General* v *Jewish Colonial Association* (1901) 1 K B 123
2 S 406 of the said Act
3 See *Banque des Marchands de Moscou* v *Kindersley* (1951) Ch 112 ; *Lord Advocate* v *Huron and Erie Loan and Savings Co* 1911 S C 612 *Dreyfus* v *Great Atlantic Inc* (1951) 3 All E R 882 ; *Lloyd Generale Italiana* (1885) 29 Ch D *Re Tovarishestvo Manufactur Ltd's g Rule* (1944) Ch 401
4 S 23 of the English Insurance Companies Act 1948

to do same in accordance with the law in force immediately before the commencement of the Insurance Act, 1938 Thus the obligations to prepare the accounts and balance sheet and to have them audited by a qualified auditor and to submit the returns with the Governor General-in-Council under the Indian Life Assurance Companies Act, 1912 or under the obligations under the Indian Insurance Companies Act, 1928, were always there with the insurers before the commencement of the Insurance Act, 1938, which repealed the said two Acts

3 **Applicability** —The provisions of this section will apply only to those insurers whose accounting year has expired prior to the commencement of the Insurance Act, 1938, *i e*, when their accounting year expires before 1st July, 1939, when the said Act was brought into force Any insurer whose accounting year did not expire before that date would not have the benefit of this section He has to prepare the accounts and balance-sheet, to have them audited and to submit the returns in accordance with the provisions of this Act

4 **"Any accounting year'** —The accounting year referred to in this section may be either financial year or calendar year In any case such year must expire before 1st July, 1939 and must not fall beyond the said date [1]

Furnishing reports

18 Every insurer shall furnish to the Controller a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members or policy-holders as the case may be

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *"Every report on the affairs of the concern"*
4 *Members Who are*
5 *Policy holders*
6 *Applicability*

1 **Legislative changes** —The word "Controller" occurring in the section was substituted by Act XLVII of 1950

2 **Object and scope** —The object of the section in requiring an insurer to file with the Controller the report on the affatrs of the concern is to keep the said report as a public document in the office of the said public authority The provisions of this section are in line with or similar to the provisions in the English Act where sub-section (3) of section 8 provides that "there shall be deposited with every revenue account and balance-sheet of a company any report on the affairs of the company submitted to the shareholders or policy-holders of the company in respect of the financial year to which the account and balance-sheet relate" No time-limit has been fixed within which such report has to be furnished to the Controller but that it has been provided that it has to be submitted immediately after its submission to the members or policy-holders

3 **"Every report on the affairs of the concern"**—The expression "Every report on the affairs of the concern' should mean not only the annual report as is generally placed before the members or the policy-holders but should also include other reports if they relate to the affairs of the business of the insurer and are placed before the members or the policy-holders, as the case may be If any report on the affairs of

1 *See* also Note 5 under section 11 *supra*

the insurer are not placed before his members or the policy holders, the copy of such a report need not be furnished to the Controller [1] The annual report of the Directors under the English Companies Act, 1948, contains amongst others, the state of the company's affairs, the amount to be paid as dividend and the amount to be carried to reserves The report also deals with such matters as change in the nature of the company's business or in the company's subsidiaries or the classes of business in which the company has an interest, whether as member of another company or otherwise In short, the report states all the material facts so that members may be in a position to appreciate the state of company's affairs [2]

4 Members, who are —A 'member' in relation to a company is defined as not including a bearer of a share-warrant of the company issued in pursuance of section 114 of the Companies Act [3] But the bearer of a share-warrant may however, be deemed to be a member for such purposes as may be specified in the articles of a company [4] The word 'member is a term of wider connotation than the 'shareholder' of a company The term includes members of all kinds of companies In a company limited by shares, the word 'member' should include both equity and preference shareholders

The words member', 'shareholder' and 'holder of a share' have been used interchangeably in the Companies Act The words 'holder of a share are equal to the word shareholder' and the expression 'holder of a share denotes, in so far as the company is concerned only a person who, as a shareholder, has his name entered on the register of members [5]

5 Policy-holders —See Note 20 under section 2, *supra*

6 Applicability —This section has been applied to the Life Insurance Corporation of India [6]

19 Every insurer, being a company or body incorporated under any law for the time being in force in India, shall furnish to the Controller a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer within thirty days from the holding of the meeting to which it relates

Abstract of proceedings of general meetings

SYNOPSIS

1	*Legislative changes*	4	*"Minutes of the proceedings"*
2	*Applicability*	5	*"Every general meeting"*
3	*Object and scope*	6	*"Minutes Book"*

1 Legislative changes —(*a*) The word 'India' occurring in the section was substituted by Act LXII of 1956

(*b*) The word 'Controller' and the words "a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer' occurring in the section were substituted by Act XLVII of 1950

1 *See* S 165 of the Companies Act 1956 for statutory report a certified copy of such statutory report is also required to be delivered to the Registrar for registration forthwith after copies the eof have been sent to the members of the company

2 *See* S 157 of the English Act

3 S 2 (27) of the Companies Act 1956

4 *See* S 115 (5) of the said Act

5 *Howrah Trading Co v I T Commissioner* 1959 S C J 1193 (1959) 2 Com Cas 202 1959 S C 775 *see also Aaron's Morgan* (1887) 37 Ch D 346

6 *See* S 43 (1) of the L I C Act *post*

2 **Applicability** —The section applies to an insurer which is a company or body incorporated under any law for the time being in force in India It will apply to all Indian Companies incorporated as limited by shares or as limited by guarantee A foreign company registered under the Companies Act 1956, will also become subject to the provisions of this section But with regard to foreign companies the Central Government has been given the discretion under section 594 of the Companies Act, 1956, to modify the requirements of preparation of balance-sheet, and profit and loss account as specified in clause (*a*) of sub section (1) of that section by a notification in the official Gazette [1]

3 **Object and scope** —The object of this section also is to make the minutes of the proceedings of every general meeting of the company public by furnishing a certified copy of same to the Controller The proceedings of every general meeting held by the company and as recorded in the Minutes Book of the company shall have to be furnished, that is to say a certified copy of the minutes of the proceedings of the general meeting, whether annual or special, as entered in the Minutes Book of the company shall have to be furnished and the minutes of that proceeding and those furnished to the Controller must tally Such certified copy of the minutes has to be furnished within thirty days from the holding of the general meeting to which the minutes relate

4 **"Minutes of the proceedings"** —Section 193 of the Companies Act, 1956, *inter alia* provides that every company shall cause minutes of all proceedings of every general meeting to be kept by making within fourteen days of the conclusion of every such meeting concerned, entries thereof in a book kept for that purpose with their pages consecutively numbered The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat But such minutes must not contain any matter, which in the opinion of the chairman of the meeting (*a*) is or could reasonably be regarded as defamatory of any person, (*b*) is irrelevant or immaterial to the proceedings, or (*c*) is detrimental to the interests of the company The record of proceedings of each meeting shall be dated and signed by the chairman of the same meeting within the aforesaid period of fourteen days or in the event of the death or inability of that chairman within that period, the same must be signed by a director duly authorised by the Board for the purpose Minutes once made and signed ought never to be altered by striking out or adding anything [2] Such minutes signed by the chairman are to be taken as *prima facie* correct [3] But they can be contradicted by other evidence [4] But sometimes the articles of a company make the minutes as conclusive and in such cases the regularity of the notice may be seen,[5] but the accuracy or correctness of the minutes cannot be disputed unless they have been shown to have been recorded fraudulently,[6] or where on the face of the minutes they are wrong [7] The doctrine of *omnia rite acta praesumuntur* applies to minutes of the proceedings

5 **"Every general meeting"** —Under the Companies Act, 1956, meetings of the company other than the directors' meeting may be (*a*) annual general meeting, (*b*) general meeting other than annual general meeting, or

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1 *See* also Note 6 under section 17 *supra*
2 *Re Cowley and Co* (1889) 42 Ch D 209
3 *Re Indian Zoedone and Co* (1884) 26 Ch D 70
4 *Re Llanharry Hematite Iron Ore Co Roney's case* (1864) 4 De G J and Sm 426
5 *Betts and Co v Macnaghten* (1910) 1 Ch 430
6 *Kerr v Mottram* (1940) Ch 657
7 *Re Caratal (New) Mines Ltd* (1902) 2 Ch 498

(c) extraordinary general meeting convened on requisition Of these, the annual general meeting is called the statutory general meeting which has to be convened in each year according to the provisions of section 166 of the said Act It has been observed in *Re El Sombrero Ltd* [1] thus "There is a clear statutory duty on the directors to call the meeting, whether or not the accounts, the consideration of which is only one of the matters to be dealt with at an annual general meeting, are ready or not" In case of default in holding an annual general meeting the Central Government has been given the discretion on the application of a member to call or direct the calling of the annual general meeting [2] The directions in this regard that may be given by the Central Government will also include any directions that one member of the company present in person or by proxy shall be deemed to constitute a meeting It has been held that for one member to be deemed to constitute a meeting, the direction of the Central Government is necessary, otherwise at least two persons are necessary for a meeting [3]

A general meeting of the company may be called by giving not less than twenty-one days' notice in writing but it may be called after giving shorter notice than 21 days if consent is accorded thereto (*i*) in case of annual general meeting, by all the members entitled to vote thereat, and (*ii*) in case of other general meetings by members holding not less than 95 per cent of such part of the paid up share capital, or where the company has no share capital by not less than 95 per cent of the total voting power exercisable at that meeting [4] In construing the length of 21 days for giving a notice, the date on which the notice is served and the date of the meeting are to be excluded [5] A benevolent construction is not to be applied in construing the notice [6] Where a notice convening a meeting does not specify a particular business to be transacted therein that matter cannot be dealt with in that meeting [7] 'The transaction of business which has not been sufficiently notified or which is substantially different from that notified is invalid, but want of notice of some of the business does not invalidate such business as has been properly notified "[8]

For a valid meeting the requisite quorum must be present, in the absence of a quorum if the meeting is held, the proceedings are invalid [9] But the quorum required is the quorum to be present at the time of beginning to consider the business of the meeting and it need not be present throughout or at the time of taking the vote on any resolution [10]

6 Minutes Book —As to whether minutes should be in bound books or not is a question upon which there is some diversity of opinion The great advance in modern times of loose-leaf books has extended their use to companies and other bodies Under the English Companies Act the minutes need not be kept in a bound book but may be recorded in loose leaf books or in any other manner, prov ded that adequate precaution is taken for guarding

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1 (1958) 3 All E R 1 at p 6
2 *See* S 167 Companies Act 1956 similar Power is given to the Board of Trade under the English Act *see* S 131 of the said Act
3 *State of Kerala* v *West Coast Planters Agencies Ltd* 1958 Com Cases 13
4 S 171 Compan es Act 1956 *see* also S 133 of the Engl sh Act
5 *Neg pha Chetter* v *Mod es Race Club* I L R (191) Mad 508 (1916) 1 M L J 462
6 *Bimenain Pres d* v *New Central Jute Mills* 1961 Com Cases 125
7 *Pacific Coast Coal Lines Ltd* v *Arbuthnot* (1917) A C 607 *see* also *Kent* v *Cromb Tramways Co* (1898) 1 Ch 358 C A *Hampshire Land Co* (1896) 2 Ch 743 s p
8 Halsbury s Laws of England Vol v p 336 *see* also *Carruth Imperial Chemical Industries* (1937) 2 All E R 422; 1937 A C 707
9 *Re Romford Canal Co* (1883) 24 Ch D 85
10 *Re Hartley Board Ltd*, (1951) 3 All E R 695

against falsification and facilitating discovery [1] Under the Companies Act, 1956, a minutes book must have their pages consecutively numbered and every page of every such book shall be signed or initialled and the last page of the record of proceedings shall be dated and signed by the chairman of the said meeting or the chairman of the next succeeding meeting or in his absence by a director duly authorised by the Board But in no case the minutes of proceedings of a meeting shall be attached to any such book by pasting or otherwise [2]

Custody and inspection of documents and supply of copies

20 (1) Every return furnished to the Controller or a certified copy thereof shall be kept by the Controller and shall be open to inspection, and any person may procure a copy of any such return, or of any part thereof, on payment of a fee of six annas for every hundred words or fractional part thereof required to be copied, any five figures being deemed equivalent to one word

(2) A printed or certified copy of the accounts, statements and abstract furnished in accordance with the provisions of section 15 or section 16 shall, on the application of any shareholder or policy-holder made at any time within two years from the date on which the document was so furnished, be supplied to him by the insurer within fourteen days when the insurer is constituted, incorporated or domiciled in India and in any other case within one month of such application

(3) A copy of the memorandum and articles of association of the insurer, if a company, shall on the application of any policy-holder, be supplied to him by the insurer on payment of one rupee

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Every return open to inspection*
4 *Right to obtain copies of returns*
5 *Shareholder or policy-holder's right to obtain printed or certified copy of accounts and abstract, sub-section (2)*
6 *Insurer's duty to furnish, time-limit*
7 *Policy-holder's right to copies of memorandum and articles of insurer*

1 Legislative changes —(*a*) The word "Controller" occurring in sub-section (1) was substituted by Act XLVII of 1950

(*b*) The word "India" occurring in sub-section (2) was substituted by Act LXII of 1956

2 Object and scope —The object of the section is to make the returns, such as, the accounts, abstract and other statements filed with the Controller, available to general public irrespective of whether he is a shareholder of the company, if the insurer is a company or a policy-holder, with the insurer or not Any member of the public if he be interested to know anything about the management organisation financial condition of any insurer obtains his

1 *See* S 436 of the Act this section purports to overrule *Hearts of Oak Assurance Co* v *Flower and Sons* (1936) Ch. 76
2 *See* S 193 of the said Act

information about same by inspection of the returns in the Controller's office It also offers an effective check in the internal management of the insurer's enterprise and venture so that it may not suffer from wanton public criticism Under the English Act, any documents deposited at the Board of Trade or certified copies thereof are also kept by the Registrar of Companies or by any other officer of the Board under their directions and any such documents and copies shall be open to inspection and copies thereof may be procured by any person on payment of prescribed fees [1] Under the English Act provisions has been made whereby it has been made obligatory on the Board of Trade to lay annually before Parliament the accounts balance-sheets, abstracts and other documents under the said Insurance Companies Act deposited with them during the preceding year except reports on the affairs of insurance companies submitted to the policy-holders or shareholders thereof [2] Under the Companies Act, 1956, certain obligations have been imposed on the Central Government to lay before both the Houses of Parliament certain matters mentioned in the said Act [3] Similar provisions have been made in section 610 of the Companies Act, 1956 [4] for any inspection of any documents kept by the Registrar by any member of the public on payment for each inspection, of a fee of one rupee

The section comprises those sub-sections which deal with three distinct matters Sub-section (1) confers right on a member of the public to have inspection of the returns and to have certified copies thereof on payment of prescribed fees, sub section (2) confers right on the shareholders and the policy holders to have the printed or certified copy of the accounts, statements and abstract from the insurer, and sub section (3) confers right on the policy holder to obtain a copy of the memorandum and articles of association of the insurer if he is a company

3 **Every return open to inspection** —Sub-section (1) of this section enjoins a duty on the Controller to keep at his office every return furnished to him or a certified copy thereof The expression 'every return" used in this sub-section will comprise (*i*) the returns submitted in accordance with section 15 (*ii*) the returns submitted in terms of section 16 (*iii*) a certified copy of every report on the affairs of the concern furnished in terms of section 18 and (*iv*) a certified copy of the minutes of the proceedings of every general meeting in case of an insurance company submitted under section 19 Besides such return will also comprise (*i*) a statement of investments of assets where the insurer carries on life insurance business and submitted in accordance with section 28, (*ii*) returns of investments relating to controlled fund and changes therein submitted in terms of section 28A and (*iii*) statements required after amalgamation and transfer submitted in accordance with section 37 [5]

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1 *See* S 30 of Insurance Companies Act 1938

2 *See* S 10 of the said Act

3 *See* section 638 for annual report by Central Government section 620 for power to modify Act in relation to Government Companies section 637 for delegation of powers section 89 (4) for termination of disproportionately excessive voting right in existing companies section 324 (3) for prohibition of appointment of managing agents in certain cases section 396 (4) for amalgamation of companies in national interest section 641 for power to alter schedules and section 642 for power of Central Government to make rules

4 English Act section 426 previous Companies Act section 24(5)

5 *See* Notes 4 8 and 9 under section 15 Note 4 under section 16 Note 4 under section 17 Note 3 under section 18 and Note 4 under section 19 *supra*.

Sub-section (1) of this section further confers right on any person to obtain inspection of the returns mentioned above It also imposes a corresponding obligation on the Controller to allow inspection of any such returns to any person when request for such inspection is made to him

4 **Right to obtain copies of returns** —This sub-section also confers right on any person to have a copy of any such returns referred to in Note 3 above provided he pays the prescribed fee for same The fee prescribed for such copy is six annas (thirty-seven naye Paise) for every hundred words or fractional part thereof and five words should be taken as equivalent to one word for the purpose of calculation of the fees required for such copy On the payment of the required fees he is entitled to have a copy either of the whole return or any part thereof

5 **Shareholder's or policy holder's right to obtain printed or certified copy of accounts and abstract, sub section** (2) —Sub-section (2) of this section confers right on any shareholder or policy-holder to obtain from the insurer, free of any charge a printed or certified copy of the accounts, statements and abstract furnished to the Controller in accordance with the provisions of section 15 or section 16 But an application in this regard must be made by the shareholder or the policy-holder who requires such documents, to the insurer and such application is made within two years from the date on which the document required was furnished to the Controller as in accordance with section 15 or section 16 This section does not impose any obligation on the insurer to send the said printed or certified copy of the accounts, statements and abstract *suo motu* to any shareholder or policy-holder, unless an application in that regard within the time aforesaid is to be made to him

Under the English Act, any shareholder or policy-holder is also entitled to a printed copy of the accounts balance-sheet, abstract or statement last deposited at the Board of Trade in accordance with section 8 of the said Act when an application in that regard is made by him to the insurer who will then forward those documents to the said shareholder or policy-holder by post or otherwise [1]

6 **Insurer's duty to furnish printed or certified copy of the accounts etc, time-limit sub section** (2) —When an application is made to an insurer by any shareholder or policy-holder requesting him to supply the printed or certified copy of the accounts, statements and abstract to such shareholder or policy-holder, it is the duty of the insurer to supply him with the said copies when the application is made within the time limited in this sub-section, *i e*, within two years from the date on which those documents were furnished to the Controller The insurer shall have to supply the said printed or certified copy of the accounts, statements and abstract within fourteen days of such application when the insurer is constituted, incorporated or domiciled in India and in any other case, within one month of such application It may be noted that in the corresponding provisions of the English Act no such time-limit for supplying such copy is prescribed

7 **Policy holder's right to copies of memorandum and articles of insurers sub section** (3) —Sub-section (3) of this section makes it obligatory on an insurer who is a company to supply a copy of the memorandum and articles of association of that company to any policy-holder when the latter makes an application for such copies on payment of rupee one as fee for such

1 *See* S 8 (6) Insurance Companies Act 1958

copies This sub-section has been enacted with the obvious object of enabling the policy-holder of an insurance company to obtain copies of memorandum of association and articles of association to which he is normally not entitled Under the Companies Act it is obligatory on a company to send to a member when he so requires within seven days of such requirement and on his paying a fee of one rupee, a copy each of the following documents, as in force for the time being—

(*a*) the memorandum ,

(*b*) the articles, if any ,

(*c*) the agreement, if any, entered into or proposed to be entered into, by the company with any person appointed or to be appointed as its managing agents or as its secretaries and treasurers , and

(*d*) every other agreement and every resolution referred in section 192 of the said Act, if and in so far as they have not been embodied in the memorandum or articles [2]

A penalty is also provided in the said section in case of default, which has now been enhanced from ten rupees to fifty rupees [2]

8 **Applicability** —This section has been applied to the Life Insurance Corporation of India except sub-section (3)

21 (1) If it appears to the Controller that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

Powers of Controller regarding returns

(*a*) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return ,

(*b*) call upon the insurer to submit for his examination at the principal place of business of the insurer in India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose ,

(*c*) examine any officer of the insurer on oath in relation to the return ,

(*d*) decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer or of such further time as the Controller may specify in the requisition and if he declines to

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1 See S 39 Companies Act 1956 S 25 of the previous Act and S. 24 of the English Act

2 S. 39 (2) of the Companies Act 1956

accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 or section 28 or section 28A relating to the furnishing of returns

(2) The Court may on the application of an insurer and after hearing the Controller cancel any order made by the Controller under clause (*a*), (*b*) or (*c*) of sub section (1) or may direct the acceptance of any return which the Controller has declined to accept, if the insurer satisfies the Court that the action of the Controller was in the circumstances unreasonable

Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Controller made the order or declined to accept the return

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Powers of the Controller under this section, sub-section* (1)
(i) *require further information, clause* (*a*)
(ii) *examination of book of accounts, etc and supply of statement, clause* (*b*)
(iii) *power of oral examination, clause* (*c*)
(iv) *power of refusal to accept returns, clause* (*d*)
4 *Time limit for rectifying the defects, etc , sub-section* (1)
5 *Refusal to accept returns, effect of, sub-section* (1)
6 *Right of the insurer to move the court against the order of Controller, sub-section* (2)
(i) *Limitation*
7 *Powers of the court*

1 Legislative changes —(*a*) The word "Controller" occurring in the section has been substituted by Act XLVII of 1950

(*b*) The word ' India" occurring in clause (*b*) of sub-section (1) was substituted by Act LXII of 1956

(*c*) The words "or of such further time in the requisition" occurring in clause (*d*) of sub-section (1) was inserted by Act XLVII of 1950 , the words and figures "or section 28' occurring in the same clause were inserted by Act VI of 1946 and the words and figures "or section 28A" in the same clause were inserted by Act XLVII of 1950

(*d*) The proviso to sub section (2) was added by Act XIII of 1941

[1] **2 Object and scope** —The object of the section is to invest the Controller with certain powers with regard to the returns and statements submitted to him in accordance with the foregoing sections 15, 16, 18 and 19 and sections 28, 28A and 37 following The Controller is not merely a receiving officer but has certain duties and responsibilities with regard to them He has been given the powers to scrutinise and examine for himself whether the returns and statements submitted to him are accurate and sufficient in complying with the requirements of the Act When the returns and statements or any of them suffer or suffers from any inaccuracies or deficiencies or there are defects in any respect, the Controller has the power to decline to accept those returns or any of them until the inaccuracies have been set r

or the deficiencies have been supplied For the purpose the Controller has the powers to ask for further information, to call upon the insurer to produce any book of account, register or other document for his examination and to examine on oath any officer of the insurer

A right has also been conferred on the insurer to move the Court by an application against the order of the Controller if he feels himself aggrieved by that order, but such application has to be preferred within four months from the order of the Controller The Court has, in proper cases, the power to cancel the Controller's order or to direct him to accept the return but in every case the Court should hear the Controller before passing any order on such applications

3 Powers of the Controller under this section —Very wide powers have been conferred on the Controller with respect to any return furnished to him when he finds that any return so furnished by the insurer is, in any respect inaccurate or defective These powers have been enumerated in clauses (*a*) to (*d*) of sub-section (1) of this section In exercise of such powers the Controller has the discretion—

(i) *Require further information, clause* (*a*)—(*a*) to require from the insurer such further information as he may consider necessary to correct or supplement such return So the requirement of further information is meant for making the necessary correction if there be any incorrectness in the return or for supplementing the return if there be any omission in it The Controller has the power under clause (*a*) of sub-section (1) to direct the insurer to have the said further information to be certified by an auditor or actuary The obvious meaning is that the Controller may give such direction that further information when it relates to accounts and balance-sheet, it should be certified by an auditor or when it relates to abstract and actuarial report, it should be certified by an actuary But in any case before directing to submit further information, the Controller must be satisfied that it is necessary to so order for the purpose of correcting or supplementing the return

(ii) *Examination of books of account, etc , and supply of statement, power of*—(*b*) to call upon the insurer to submit any book of account register or other document for the examination of the Controller at the principal place of insurer's business in India or to supply any statement which the Controller may specify in a notice served on the insurer for the purpose Under clause (*b*) of sub-section (1), the Controller has been given the power to examine any book of account register or other document and such book of account, register or other document must be made available for his examination at the principal place of insurer s business in India and it should not be examined elsewhere than in his principal office in India This clause also empowers the Controller to call upon the insurer to supply any statement to him The statement to be supplied to him must be specified in notice served on the insurer Without specifying the statement required in the notice and without serving such notice on the insurer, the Controller cannot call upon the insurer to supply any statement to him

(iii) *Power of oral examination*—(*c*) to examine on oath any officer of the insurer in relation to the return Clause (*c*) of sub section (1) empowers the Controller to take oral evidence in relation to the return and the Controller has power to administer the oath The person to be examined by him on oath must be an officer of the insurer, *i e* , he must hold some responsible office with the insurer and must not be a clerk or an assistant in the office of the insurer In the administration of the oath and its form the provisions of the

Indian Oaths Act (X of 1873) are applicable Hence, if the principal officer has any objection to making an oath he can, in lieu thereof, can make an affirmation [1] It has also been provided in the said Act that every person giving evidence on any subject before any Court or person authorised to administer oaths and affirmations shall be bound to state the truth on such subject If he says anything which is not true he may be penalised under the provisions of the Penal Code [2]

(*iv*) *Power to refuse to accept return*—(*d*) to decline to accept any such return unless the inaccuracy has been corrected or the deficiency has been supplied Under clause (*d*) of sub-section (1), the Controller has been given the power to refuse to accept any return which is inaccurate or deficient in material particulars This power of refusal to accept the return should only be exercised when in spite of the opportunity given to the insurer, he fails to make good the deficiency or to correct the inaccuracy or to remove the defect within the time allowed under clause (*d*) or within the extended date which the Controller may specify

4 **Time-limit for rectifying the defects** —Any inaccuracy occurring in the return or any deficiency therein found has to be corrected or made good before the expiry of one month from the date on which the requisition asking for correction of the inaccuracy or supply of the deficiency was delivered to the insurer Thus, the insurer has to comply with the requisition within one month from the date of delivery of the requisition to him The Controller has also the power to specify in the requisition further time than one month and in that case the insurer has to comply with the requisition within the time specified in the requisition But the time in the latter case would also begin to run from the date of delivery of the said requisition to the insurer

5 **Refusal to accept return, effect of** —When the Controller refuses or declines to accept the return because of inaccuracies, deficiencies or defects and when the insurer, in spite of the opportunity being given to him, fails or neglects to rectify or make good or supply same within one month or within such further time specified in the requisition, he shall be deemed to have failed to comply with the provisions of section 15 or section 16 or section 28 or section 28A relating to the furnishing of returns as the case may be The expression 'shall be deemed to have failed" means that although factually the insurer has not failed to submit the returns under those sections yet by fiction he will be treated as if he has not filed any returns under those sections The consequences of not filing the returns would also visit the insurer

6 **Right of the insurer to move the Court against the order of the Controller, sub section (2)** —Right has been conferred on the insurer to move the Court by way of an application against any order passed by the insurer under clauses (*a*) to (*d*) of sub section (1) of this section, that is to say, the insurer can move the Court (*i*) against the order requiring from him further information as in clause (*a*) of sub section (1) of this section, (*ii*) against the order calling upon him to submit books of account registers or other documents for his (Controller's) examination in terms of clause (*c*) or to supply any statement, (*iii*) against an order of examination on oath of any officer of the insurer, and (*iv*) against declining to accept any return in terms of clause (*d*) of sub-section (1)

(*i*) *Limitation* —In each of the abovementioned cases the Court has to be moved by the insurer by way of an application before the expiration of four

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1 *See* S 6 of the Oaths Act

2 *See* S 191, Penal Code Act XLV of 1860

months from the time when the Controller made the order or declined to accept the return Time of four months begins to run from the date of the order of the Controller, whether the order is an order of refusal to accept the return or the orders are (*i*) requiring further information, (*ii*) calling upon to produce books of account, registers or other documents, or (*iii*) requiring examination of the principal officer on oath Month means month reckoned according to British calendar [1]

7 **Powers of the Court** —Under sub-section (2) of this section, the Court has been invested with the powers (*i*) to cancel any order made by the Controller under clause (*a*), (*b*) or (*c*) of sub-section (1), *i e*, it has the power to cancel (*a*) any order requiring from the insurer further information, (*b*) any order calling upon him to submit books of account, etc, for his examination or to supply any statement, or (*c*) any order for examination on oath of any officer, and (*ii*) to direct the acceptance of any return which the Controller has declined to accept under clause (*d*) of sub-section (1)

But before cancelling any order of the Controller and for directing the acceptance of any return, the Court should hear the Controller, that is, the latter should be given an opportunity of being heard with regard to its orders made in respect of the returns concerned Moreover, the insurer on his part must satisfy the Court that the action taken by the Controller in the circumstances of the case is unreasonable

8 **Analogous provision under the English Act** —Sub-section (2) of section 8 of the Insurance Companies Act, 1958, provides, "The Board of Trade shall consider the documents deposited under the foregoing sub-section [sub-section (1) of the said section] and if any such document appears to the Board to be inaccurate or incomplete in any respect, the Board shall communicate with the company with a view to the correction of any such inaccuracies and the supply of deficiencies "

9 **Applicability** —This section has been applied to the Life Insurance Corporation of India [2]

Power of Controller to order re-valuation

22 (1) If it appears to the Controller that an investigation or valuation to which section 13 refers or an abstract of a valuation report furnished under clause (*c*) of sub-section (2) of section 16 does not properly indicate the condition of the affairs of the insurer by reason of the faulty basis adopted in the valuation, he may, after giving notice to the insurer and giving him an opportunity to be heard, cause an investigation and valuation as at such date as the Controller may specify to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Controller,

and the insurer shall place at the disposal of the actuary so appointed and approved all the material required by the actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Controller may specify

1 S 3 (35) General Clauses Act X of 1897 *see also Krishna Bilas v Sonadhan* 1961 Tr pura 16

2. *See* S 43 (2) of the L I C Act and G S R 734 dated August 25 1958 *post*

(9) The provisions of sub sections (1) and (4) of section 13, and of sub-sections (1) and (2) of section 15 or, as the case may be, of sub-section (2) of section 16, shall apply in relation to an investi gation and valuation under this section

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Controller may specify

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Power of the Controller under the section, sub-section* (1)
4 *Notice to the insurer and opportunity of being heard, sub-section* (1)
5 *Duties of the insurer, sub-section* (1)
6 *Procedure in re-valuation, sub-section* (2)
7 *Date of furnishing the result, sub-section* (2) *proviso*
8 *Analogous provision under the English Act*

1. **Legislative changes**—(*a*) This section has been re-numbered as section 22 (1) and section 22 (2) is inserted by Act VI of 1946

(*b*) The word "Controller" occurring in the section is substituted by Act XLVII of 1950

(*c*) The words and figures "or an abstract of valuation of section 16" occurring in sub-section (1) were inserted by Act VI of 1946

(*d*) Paragraph 2 of sub-section (1) was inserted by Act VI of 1946

(*e*) Sub-section (2) was inserted by Act XLVII of 1950

2 **Object and scope** — Apart from general powers conferred on the Controller regarding returns as envisaged in the foregoing section 21, this section also invests him with a particular power to order re-valuation It is the statutory duty of every insurer carrying on life insurance business in India to make a re-valuation of all the life insurance business transacted by him including a valuation of his liabilities in respect thereto once at least in every three years in conformity with the provisions of section 13 But this section empowers the Controller to cause an investigation to be made including valuation as at such date as he may specify to be made The order of the Controller to cause a re-valuation to be made as provided in this section will not necessarily synchronize with the date of the valuation as provided in section 13 But the Controller's power to order re-valuation under this section must arise out of or be based on the actuarial report and abstract prepared under section 13 This section further indicates that the Controller has not been made an automaton under the Act with regard to the returns or actuarial report and abstract as if to deal with them in a mechanical routine work but he has been invested with powers along with corresponding dates with regard to them The Controller will exercise his power under this section only when it will appear to him that the actuarial report and abstract prepared under section 13 does not properly indicate the condition of the affairs of the insurer because of the faulty basis adopted in the valuation So the basis adopted in the valuation is the foundation of the power of the Controller under this section This section also lays down the procedure to be adopted in re-valuation this section, which procedure is the same as the procedure laid down in 13, section 15 or section 16 as the case may be This section further

certain duties of the insurer in regard to such re valuation, such as, appointment of an actuary, placing at the disposal of such actuary all the material required for the purpose and furnishing the result of such investigation and valuation to the Controller The insurer has also been given the opportunity to make his representations to the Controller with regard to such re-valuation being made

3 **Power of Controller under the section, sub-section** (1)—Sub-section (1) of this section speaks of a specific power of the Controller Such power enjoins on him to cause an investigation and valuation to be made at the expense of the insurer by an actuary appointed by the insurer for the purpose of the said investigation and valuation The actuary so appointed by the insurer must be approved by the Controller He will exercise the under this section only when it appears to him that an investigation or valuation made under section 13 of the Act or an abstract of a valuation furnished to him, in case of insurer established outside India, under clause (*c*) of sub-section (2) of section 16 of the Act, does not properly indicate condition of the affairs of that insurer by reason of the faulty basis adopted in the valuation The decision whether a basis adopted in the valuation is faulty or not rests within the discretion of the Controller He is by the nature of his duties vested with a sound discretion in dealing not only with the Indian insurers but also with foreign insurers and is answerable to no one in the exercise of such discretion But he is amenable to the ordinary law of the land in case of abuse thereof [1]

Under this section the Controller has also the power to specify the date within which all the material required by the actuary so appointed and approved has to be placed before him Such date must not be less than three months He has also the power to specify the date within which the result of the investigation and valuation shall be furnished

4 **Notice to the insurer and opportunity of being heard, sub section (1)**—Sub section (1) of this section further prescribes that before an order of re-valution is made in respect of any insurer, the Controller must serve a notice upon the insurer and give him an opportunity of being heard in the matter If the Controller makes an order under this section without serving the notice and without giving the insurer concerned an opportunity to be heard in the matter it would be in direct violation of the provisions of this section and his action would be contrary to law Further, his action in the circumstances would be against natural justice The doctrine of natural justice is based on the maxim *Audi alteram partem, i e* hear the other side The principle of natural justice was applied to quasi judicial authorities in *Cooper* v *Wandsworth Board* [2] and *Spackman* v *Plumstead Board of Works* [3] Even the party to be affected by any order is entitled to a notice of the time of hearing without which he cannot be said to have a reasonable opportunity of being heard [4] In *Cooper* v *Wandsworth Board (supra)* the rule of natural justice was expressed in either (*a*) to give the person to be affected "notice that he intends to take this matter into consideration with a view to coming to his decision or (*b*) "if he has to come to his decision, that he proposes to act upon it," to "give him an opportunity of showing cause why such steps should not be taken", that is to say "to give notice of his order be he proceeded to execute it" [5]

1 See *State ex rel Allstate Insurance Co* v *Bowers* 199 N I Rep 555
2 (1863) 14 C B (N S) 180
3 (1885) 10 A C 229
4 *R* v *Newmarket Assessm. Committee* (1916) 2 All E R 371
5 *See* also *Ehem Chand* v *Union of India* [1967] S C 309 for the application of the doctrine in the Constitution of India for elaborate discussion of the doctrine see Basu's Constitution of India, 4th Ed Vol I pp 345-373

5 Duties of the insurer, sub section (1) —Certain duties have been imposed upon an insurer in respect of whom an order under this section is proposed to be made or is made When an insurer is served with a notice about the proposed re valuation to be made, he should, if he so desires, show cause against the proposed order stating *inter alia* that that investigation or valuation to which section 13 refers or an abstract of a valuation report furnished under clause (c) of sub section (2) of section 16 does properly indicate the condition of the affairs of the insurer and that the basis adopted in the valuation does not suffer from being faulty in any way He should also appear at the hearing to substantiate the aforesaid two points But when an order is made against him, after such hearing to cause an investigation and valuation to be made under this section, the insurer concerned should (i) appoint an actuary for the purpose, (ii) have his appointment thus made approved by the Controller, and (iii) place all the material before the said actuary required by him for the purposes of the investigation and valuation He should also place those materials before the said actuary within the period specified in that behalf by the Controller which period should in no case be less than three months

But this period of three months should be calculated from the date of receipt of notice of approval accorded to the appointment of the actuary and received by the insurer The insurer should also furnish the abstract and statement prepared after such investigation and valuation to the Controller within the date specified by him in that behalf

6 Procedure in re-valuation, sub section (2) —Sub section (2) of this section lays down the procedure to be adopted in re-valuation under this section when an order to that effect is passed by the Controller The procedure to be adopted under this section is the same as laid down in sub-sections (1) and (4) of section 13 And with regard to the submission of returns, the provisions of sub-sections (1) and (2) of section 15 and sub-section (2) of section 16 in case of insurers established outside India will *mutatis mutandis* apply [1]

7 Date of furnishing the return under this section, sub-section (2) proviso —Unlike the provisions in sub-section (1) of section 15 and sub-section (2) of section 16 for filing returns under those sections within nine months or an extended period of six months more from the end of the period to which abstract and statement refer, the proviso to sub section (2) of this section prescribes that the abstract and statement prepared as the result of re investigation and re-valuation shall be furnished to the Controller within the period specified by the Controller

8 Applicability —This section has been applied to the Life Insurance Corporation of India [2]

Evidence of documents

23 (1) Every return furnished to the Controller which has been certified by the Controller to be a return so furnished, shall be deemed to be a return so furnished

(2) Every document, purporting to be certified by the Controller to be a copy of a return so furnished, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved

1 *See* Notes under appropriate heads under sections 13 15 and 16 *supra* 2. *See* Note 9 under section 22 *supra*

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Copy of return when to be received in evidence*
(i) *Certified copies of public documents*
(ii) *Returns under the Act whether public document*
4 *Analogous provisions under the English Act*

1 Legislative changes —The word "Controller" occurring in sub-sections (1) and (2) of this section was substituted by Act XLVII of 1950

2 Object and scope —The object of the section is to make the copy of any return furnished to the Controller and certified by him to be a copy of that return admissible in evidence

This section provides two matters Firstly, it says what is a return furnished to the Controller and next it says how the copy of a return can be admissible in evidence A return furnished to the Controller under the foregoing sections 15, 16 and 22 or under sections 28 and 28A following cannot be treated as returns furnished under those sections unless the Controller certified them to be returns so furnished Hence, for a return to be furnished to the Controller it cannot be treated as so furnished although in fact it has been furnished by the insurer according to the provisions of the sections aforementioned unless the Controller certifies thereon that it has been so furnished Obviously the Controller will certify a return so furnished when he proposes not to take any action thereon either under section 21 or under section 22 aforesaid But no such certificate can be given when he takes action under section 21 or section 22 until his orders in respect of the said return are complied with or when the matter goes to the Court until the decision of the Court

Again under sub-section (2) of this section, the Controller cannot certify any copy of return to be a copy of that return until before he certifies the return to be a return furnished to him in terms of sub-section (1) of this section

3 Copy of a return when to be received in evidence —Under the Evidence Act (I of 1872) the contents of documents may be proved either by primary or by secondary evidence The former means the document itself produced for inspection of the Court and the latter means and includes (i) certified copies under the provisions of section 76, (ii) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies, (iii) copies made from or compared with the original, (iv) counterparts of documents as against the parties who did not execute them and (v) oral accounts of the contents of a document given by some person who has himself seen it [1]

(i) *Certified copies of public documents* —Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees thereof together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorized by law to make use of a seal and such copies so certified shall be called certified copies [2]

1 See sections 61 62 and 63 Evidence Act 2. *See* S 76 Evidence Act

As a general rule documents must be proved by primary evidence but secondary evidence may be given of the existence, condition or contents of a document in the cases mentioned in clauses (*a*) to (*g*) of section 65 of the Evidence Act Clause (*f*) of that section provides that secondary evidence may be given When the original is a document of which a certified copy is permitted by the Evidence Act or by any other law in force to be given in evidence [1] Section 77 of the said Act also provides that certified copies, as certified under section 76 of the said Act, may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies

(*ii*) *Returns under the Act, whether public documents* —The Evidence Act speaks of two kinds of documents, public and private The following documents are public documents, namely, (1) documents forming the acts or records of the acts (*a*) of the sovereign authority, (*b*) of official bodies and tribunals, and (*c*) of public officers legislative, judicial and executive of any part of India or of the Commonwealth or of a foreign country , and (2) public records kept in any State of private documents All other documents are private [2] Returns under the Act when certified by the Controller as furnished to him under this section are public documents as they either form the acts or records of the acts of the Controller as a public officer or they are public records kept in any State of private documents

Section 78 of the Evidence Act *inter alia* provides that Acts, Orders or Notifications of the Central Government in any of his departments or of any State Government or any department of any State Government may be proved by the records of the departments, certified by the heads of those departments respectively Section 79 of the same Act also provides that the Court shall presume to be genuine every document purporting to be a certificate certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government or by any officer in the State of Jammu and Kashmir who is duly authorised by the Central Government provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper The expression "shall presume" is defined in the Evidence Act as follows "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved "

Under the Insurance Act, sub-section (2) of this section provides that every document when certified by the Controller to be a copy of a return furnished to him shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved Under the Evidence Act a certified copy of a document is not treated as the original document but it allows a rebuttable presumption in favour of genuineness of the certified copies [3]

4 Analogous provision under the English Act —Under the Insurance Companies Act, 1958 it is provided as follows

1 *See* S 4 of the Bankers Book Evidence Act XVIII of 1891
2 *See* sections 74 and 75 of the said Act
3 For a similar provision of treating copies of public documents as the original documents *see* S 78A of the Evidence Act as amended by West Bengal Act XXIX of 1955

(*a*) Every document deposited under the said Act with the Board of Trade, and certified by the Registrar of Companies, or by any person appointed in that behalf by the President of the Board of Trade, to be a document so deposited, shall be deemed to be a document so deposited

(*b*) Every document purporting to be certified by the Registrar of Companies, or by any person appointed in that behalf by the President of the Board of Trade, to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document, unless some variation between it and the original be proved [1]

5 Applicability —This section has been applied to the Life Insurance Corporation of India [2]

24 (*Summary of returns to be published*)—[*Omitted by Act XIII of 1941*]

25 No insurer shall publish in India any return in a form other than that in which it has been furnished to the Controller

Returns to be published in statutory forms

Provided that nothing contained in this section shall prevent an insurer from publishing a true and accurate abstract from such returns for the purposes of publicity

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Analogous provision in the English Act*
4 *Publication of abstract or return and prospectus, difference*
5 *Applicability*

1 Legislative changes —The word "Controller" occurring in the section was substituted by Act XLVII of 1950

2 Object and scope —This section prohibits insurer from publishing his return in any form other than in the form in which it has been furnished to the Controller The object of the provision is not to mislead the public in publishing the return in a form in which it has not been furnished to the Controller But the proviso to this section permits the insurer to publish a true and accurate abstract from the returns furnished to the Controller for the purposes of publicity

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1 For the provisions under the Companies Act 1956 *re* certificate of incorporation *see* S 35 *re* commencement of business *see* S 149 (3) *re* registration of charge *see* S 132 *re* chairman's declaration of result of voting *see* S 178 for minutes to be evidence *see* S 193 and for registers annual returns certificates and statements to be evidence *see* S 164 ; for the corresponding provisions under the English Companies Act 1948 *see* sections 15 101 and (1) 141 (3) 145 and 118 ; *see* also the cases of *Bowman* v *Secular Society* [1917] A C 406 *Colman* v *Brougham* [1912] 1 K B 514 *Performing Right Society* v *London Theatres of Varieties* [1922] 2 K B 433 ; *Arkenborne* v *Sensolid* [1953] 1 All E R 708 ; *National Provincial Bank* v *Chapman* [1924] 1 K B 431 ; *Imperial Bank* v *Bank of National Bank* v *Statham (John) Ltd* [1940] 2 All E R 629 *Re Fire Proof Doors* [1916] 2 Ch 142

2 *See* Notes 8 under section 22 *supra*

3 Analogous provisions in the English Act —Although there is no provision analogous to the provision of this section under the Insurance Companies Act, 1958, yet section 25 of the same Act provides that where any advertisement, notice or other official publication of an insurance company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

4 Publication of abstract or return and prospectus, difference — The publication of a prospectus under the Companies Act 1956, and the publication of a return or abstract from such return under this Act differ entirely in form but they agree in one respect in that both of them are intended for advertisement to the public so that the public will be in a position to know the condition, affairs and who is who of the company In case of insurers, such advertisement attracts public to effect contracts of insurance with them and to become their policy-holders and in case of insurers being incorporated bodies, it also attracts public to invest shares in such companies The object of the publication of the return or an abstract from such return being to publicise the concern, utmost care and caution should be taken in drawing the abstract from the return so that it should be a true and accurate abstract from the return and nothing should find place in that abstract that may in any way mislead the public [1]

The obligations of those who issue advertisements like these are very onerous The "golden legacy as laid down in *Henderson* v *Lacon*,[2] is as follows 'Those who issue a prospectus, holding out to the public the great advantages which will accrue to persons who will take shares in a proposed undertaking, and inviting them to take shares on the faith of the representations therein contained, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as facts that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares" These observations also equally apply to advertisement of abstract from returns under this section But to support an action for deceit there must be some active misstatement of fact, or, at all events, such a partial or fragmentary statement of fact as that, the withholding of that which is not stated make that which is stated absolutely false [3] A statement is false if in its context it conveys a misleading impression although it is literally correct [4]

5 Applicability —This section has been applied to the Life Insurance Corporation of India

Alterations in the particulars furnished with application for registration to be reported

26 Whenever any alteration occurs or is made which affects any of the matters which are required under the provisions of sub-section (2) of section 3 to accompany an application, by an insurer for registration, the insurer shall forthwith furnish to the Controller full particulars of such alteration

1 See *Re South of England National Gas Co* (1911) 1 Ch 273 *Re Wimbledon Olympia Ltd* (1910) 1 Ch 630

2 (1867) L R 5 Eq 249 at p 262

3 *Peek* v *Gurney* (1873) L R 6 H L 377 at p 403 *see* also *Aaron's Reef* v *Twiss* (1896) A C 273 *Re London and Stafford shire Fire Insurance Co* (1883) 24 Ch D 149 *Government Stock and other Securities Investment Co Ltd* v *Christopher* (1956) 1 W L R 237 *Re Pocaya Rubber Co* (1951) 1 Ch 542

4 *R* v *Kylsant* (1932) 1 K B 442 *R* v *Bishirgian* (1936) 1 All E R 586 *R* v *Bates* (1952) 2 All E R 842 *R.* v *Russel* (1953) 1 W L R 77 *see* also *Palmer's Company Law* Chap 20

All such particulars shall be authenticated in the manner required by that sub-section for the authentication of the matters therein referred to, and, where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies, the actuarial certificate referred to in clause (f) of the said sub-section shall accompany the particulars of the alteration.

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Particulars of alteration to be authenticated*
4 *Power of rectification under the Companies Act*
5 *Applicability*

1 Legislative changes —(*a*) The word "Controller" occurring in the section was substituted by Act XLVII of 1950

(*b*) Paragraph 2 of the section was added by Act XIII of 1941

2 Object and scope —The object of this section is twofold Firstly it enables the insurer who has made an application for registration under section 3 of the Act to carry on or to continue to carry on any class of insurance business in India, to make any alteration in the requisites accompanying his application Secondly, it enjoins on the said insurer in a mandatory language to report to the Controller full particulars of the alterations so that his application may be in order and the Controller will be in a position to judge whether the particulars supplied in altered forms are sufficient to enable him to grant the insurer concerned the required certificate As a corollary it follows that any alteration occurring or when made in the necessary accompaniments of his application for registration under section 3 and when that alteration affects any of the matters mentioned therein, such alteration can be given effect to as amending the accompaniments as if the alteration was always there in those particulars unless the insurer concerned furnishes to the Controller full particulars of the said alteration so soon it is found necessary to alter and when in fact it is made The basis of the report of alteration to the Controller lies not in the alteration itself but upon the fact whether such alteration affects any of the accompaniments of his application sent in compliance with the provisions of clauses (*a*) to (*g*) of sub-section (2) of section 3 When the alteration affects any of those matters referred to in these clauses it is obligatory on the insurer to furnish forthwith to the Controller full particulars of such alteration but when such alteration does not in any way affect any matter therein mentioned, it is not obligatory on him to report same to the Controller Hence, the alterations to be reported to the Controller under this section should be material alterations in the sense that they affect any of the matters in the accompaniments of his application for registration [1]

3 Particulars of alteration to be authenticated —This section further enjoins that furnishing simply of full particulars to the Controller of the alterations will not be sufficient but all such particulars must be authenticated in the like manner as they are required to be authenticated under sub-section (2) of section 3 Thus where the alteration relates to matters in clauses (*a*) to (*e*) of sub-section (2) of section 3 a certificate from the Reserve Bank will be necessary Similarly where it relates to matters in clause (*f*) a declaration

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1 [illegible] [illegible] [illegible]

verified by an affidavit made by the principal officer of the insurer will be necessary So also where the alteration relates to matters in clause (*e*) a statement verified by an affidavit made by the principal officer of the insurer will be necessary, and so on

But where the alteration affects the assured rates, advantages, terms and conditions offered in connection with life insurance policies the actuarial certificate referred to in clause (*f*) of sub-section (2) of section 3, shall accompany the particulars of the alteration Paragraph 2 of this section seems to indicate that the certificate of the actuary already filed with the application certifying that the advantages rates terms and conditions offered in respect of life insurance business being workable and sound would not be sufficient when the alterations relate to matters in clause (*f*) of sub-section 3 and affect the assured rates advantages, terms and conditions offered in connection with life insurance policies In such a case a fresh certificate from the actuary certifying in respect of the particulars of the alteration relating to the assured rates advantages, terms and conditions should be necessary, and in that certificate it must also indicate that the altered rates, terms, advantages and conditions are also workable and sound

4 **Power of rectification under the Companies Act** —The Court has been invested with the power to rectify (*a*) register of charges and (*b*) register of members "Rectification' implies the existence of an error, mistake or defect which has to be made right But where something is done by operation of law or by or in accordance with the directions of the Court, there is no question of any wrong or defect which requires rectification [1] Even where there is a clear case for rectification the directors have no power to rectify same except to the extent of correcting clerical errors or accidental slips or omissions [2] It has also been said that the power of alteration being statutory extends only to matters provided in the section [3]

5 **Applicability** —This section shall apply to the Life Insurance Corporation of India [4]

INVESTMENT, LOANS AND MANAGEMENT

Investment of assets

27 (1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(*a*) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(*b*) the amount required to meet the liability on policies of the life insurance maturing for payment in India,

less—

(*i*) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace of payment of which have not expired, and

1 See *Bencrast Das Saraf v Dalmia Dadri Cement Ltd* 1959 Punj 232 1958 Com Cases 435

2 *Damodara v Indian National Agencies* (1945) 2 M L J 432 1945 Mad 728 *Re Denham and Allen Ltd* 1946 Ch 31

3 *Scott v Frank F Scott (London) Ltd*, (1940) 3 All E R 508 *see also Re Kr s Cruisers Ltd* (1948) 2 All E R 1105 *Re Joplin Brewery Co* (1902) 1 Ch 79 and *Re M I G Trust* 1933 Ch 542 for meaning of the expression accidental or due to inadvertence

4 *See* S 43 (1) of the L I C Act *post*

(*iii*) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability,

in the manner following, namely, twenty-five per cent of the said sum in Government securities or other approved securities and the balance in any of the approved investment specified in sub section (1) of section 27A or, subject to the limitations conditions and restrictions specified in sub-section (2) of that section, in any other investment

(2) For the purposes of sub-section (1),—

(*a*) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested in Government securities ,

(*b*) the securities of, or guaranteed as to principal and interest by the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, in the manner and to the extent hereinafter specified, namely,—

(*i*) during the first year, to the extent of twenty five per cent in value of the sum referred to in sub-section (1) ,

(*ii*) during the second year, to the extent of eighteen and three-fourths per cent in value of the said sum ,

(*iii*) during the third year, to the extent of twelve and a half per cent in value of the said sum , and

(*iv*) during the fourth year, to the extent of six and a quarter per cent in value of the said sum

Provided that, if the Central Government so directs in any case, the securities specified in clause (*b*) shall be regarded as approved securities other than Government securities for a longer period than four years, but not exceeding six years in all, and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction ,

(c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A

(3) In computing the assets referred to in sub-section (1),—

(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess , and

(b) any investment made in the purchase of any immovable property outside India, or on the security of any such property,

shall not be taken into account

Provided that nothing contained in the sub-section shall affect the operation of sub- section (2)

Provided further that the Central Government may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account in such manner as may be specified in computing the assets referred to in sub section (1) and where any direction has been issued under this proviso copies thereof shall be laid before Parliament as soon as may be after it is issued

(4) Where an insurer has accepted re-assurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded re-assurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside India shall, except to the extent of any part thereof which consists of foreign assets held outside India be held in India and all such assets shall be held in trust for the discharge of the liabilities of the nature

referred to in sub-section (1) and shall be vested in trustees resident in India and approved by the Central Government, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with

Explanation —This sub-section shall apply to an insurer incorporated in India whose share-capital to the extent of one-third is owned by or the member of whose governing body to the extent of one-third consists of members domiciled elsewhere than in India

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Assets to be invested and kept invested, determination of—*
(i) *"Matured claims"*
(ii) *"Holders of life insurance policies in India"*
(iii) *'Liability on policies of life insurance maturing for payment'*
(iv) *"The days of grace for payment have not expired"*
(v) *"Loans granted within the surrender value of policies"*
5 *Manner of investment*
6 *Assets to be invested, computation and determination of*
7 *Proportional adjustments in cases of re-insurance accepted or ceded*
8 *Investments to be kept free from all charges, etc*
(i) *Encumbrance*
(ii) *Charge*
(iii) *Hypothecation*
(iv) *Lien*
9 *Investment of foreign insurance companies*

1 **Legislative changes** —(*a*) This section in substituted by Act XLVII of 1950

(*b*) The word "India" occurring in the section was substituted by Act LXII of 1956

2 **Object and scope** —The object of this section is to safeguard the interests of holders of life insurance policies who may not promptly realise the amounts that may become due on the policies held by them The statute requires that whenever any such claim is outstanding, the insurance company concerned must keep itself in a state of commercial solvency by investing the requisite amount in assets of sufficient value and keeping such assets available for the discharge of the liability The insertion of the correct amount of claims outstanding on matured policies in the balance-sheet is designed to inform persons interested in an insurance company of the measure of the company's liability in respect of matured claims and to enable them to find out whether a corresponding amount has been kept invested in assets of the value requisite as required by clause (*a*) of sub section (1) of this section so that the interest of the holders of policies concerned may not be in peril This section also gives the reason why the statutory form of the balance sheet required to be prepared by an insurance company in Form A of Part II of the First Schedule to the Act contains a heading "Estimated liability in respect of outstanding claims whether due or intimated" is that under clause (*a*) of sub-section (1) of this section, every insurer must invest and at all times

keep invested assets equivalent to not less than the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims [1]

This section has laid down the manner in which investment of assets of the insurer in respect of his life insuransce business has to be made, *viz*, either in Government or approved securities and in approved investments as specified in sub-section (1) of section 27A following It also indicates the manner how calculation of the amount of liabilities to holders of life insurance policies matured or about to be matured in India is to be made, that is, the deductions allowable or permissible in such calculation It has also provided the criteria by which or with relation to which the computation of the assets of the insurer has to be made Certain powers have been conferred on the Central Government in directing the method of computing the value of the assets referred to in sub section (1) of this section

In cases of re-assurances of life insurance policies, either accepted or ceded, provisions have been made in sub-section (4) of this section for proportional adjustments and the manner in which such adjustments have to be made Sub section (5) of this section specifically says that all investments of assets under this section must be invested or kept invested free from all charges whatsoever including lien thereon Sub section (6) of this section also indicates how foreign companies transacting life insurance business in India shall have to maintain their assets as required under this section except the foreign assets held by them outside India The provisions of sub-section (6) have been made applicable to a company even if it be incorporated in India but whose share capital to the extent of one-third and whose directors to the same extent, consist of members domiciled elsewhere than in India

3 **Applicability** —The provisions of this section apply to all insurers, Indian or non-Indian, whether incorporated in India or elsewhere who have been engaged in transacting life insurance business in India But its provisions are not applicable to any insurer, whether Indian or non Indian, who is engaged in insurance business other than life insurance business It also applies to them who carry on life insurance and other insurance businesses In other words, an insurer carrying on fire insurance or marine insurance business or miscellaneous insurance business does not come within the purview of this section So also its provisions are not applicable to those engaged in general insurance business as defined in sub section (6 B) of section 2 of the Act But an insurer carrying on life insurance business and any one or more of other insurance businesses will become amenable to the provisions of this section

4 **Assets to be invested or kept invested, determination of** —The assets to be invested or kept invested at all times by every insurer as required under sub-section (1) of this section may be illustrated by the equation as follows

$a = lm + lp - (p + l)$, where 'a' stands for assets to be invested or kept invested, 'lm' for amount of liabilities on matured claims, 'lp' for amount required to meet the liability on policies maturing for payment, p for amounts of premiums due but not paid and 'l' for amount due for loans granted to such policies Reversing the equation as $lm + lp - (p + l) = a$ and working it out will determine the assets to be invested or kept invested under the provisions of sub-section (1) of this section The assets to be invested or kept invested would equal the liabilities under the life policies which have already accrued

1 *Controller of Insurances H C D* 1957 Cal 337

due or will be accruing due for payment, *i e*, both certain and contingent liabilities less the amount due on premiums not received and the loan advanced but not realised Thus, when from an insurer's life insurance business it would appear at a certain date his liabilities on account of policies having matured are Rs 10,000 and his liabilities on account of policies to be matured are Rs 50,000 and that an amount of Rs 5,000 is due on premiums not received and an amount of loan advanced is Rs 10,000 which has not been realised on account of the policies to be matured, his assets by applying the above formula will be according to this section as follows Rs 10,000+Rs 50,000−(Rs 5,000+Rs 10,000)=Rs 45,000 This amount of Rs 45,000 has to be invested or kept invested in the manner laid down in this section

The assets to be invested or kept invested under this section have no connection with the insurer's other assets of his business, *viz*, current assets, fixed assets or deferred charges to expense or capital assets Neither have the liabilities of the insurer any concern with his other liabilities, whether current or fixed The assets under this section have their origin not in the ordinary system of accounting but in the statute as illustrated in the above formula In other words these assets are statutory assets having their origin in life policies which have matured and which will mature less the amounts due on premiums not received and loans granted but not realised in respect of the latter kind of policies

(i) *Matured claims* —The expression "matured claims" used in clause (a) of sub-section (1) of this section seems to mean the claims which had matured by admitting the claims as payable and the expression should not mean synonymously with the "matured policies" although a claim under a policy of insurance ripens into a claim on the happening of the contingency or event insured against A policy of insurance is said to mature when the contingency or event insured against happens Thus, a policy on whole life term matures on the death of the insured and a policy on a term of endowment matures on the expiry of the term or on death of the insured if it occurs before the expiry of that period But in none of the cases it cannot be said that the claims have matured unless something more is done after the happening of the events The insurance money becomes payable on those policies when proof satisfactory to the insurer has been made on the death of the insured, and of the title of the party or parties claiming under the policy [1] Unless "satisfactory proof" or at least 'reasonable proof" is adduced, the claim cannot be said to mature [2]

(ii) *"Holders of life insurance policies in India'* —The expression "holders of life insurance policies' would mean life policy-holders and according to the definition in sub-section (2) of section 2 of "policy-holder" life policy holders will include persons to whom the whole of the interest of the life policy-holders in the policies are assigned once and for all but do not include assignees thereof whose interests in the policies are defeasible or are for the time being subject to any condition The definition given in section 2 of the policy-holder is not exhaustive It means the legal holder of the policy, that is, the person who has the legal title to the policy moneys, and therefore includes a trustee or legal mortgagee but not a mere beneficiary, an equitable mortgagee or the owner of the equity of redemption but not a solicitor exercising his lien for costs upon his client s policy [3]

1 See *London Guarantee v Fearnley* (1880) 5 App Cas 911 *Wilson v Esquimault, etc Ry* (1922) 1 A C 202; *Doyle v City of Glasgow Association* (1883) 53 L J Ch 527

2 *See* also Notes 8 and 9 U S 14 *supra*

3 *See* MacGillivray on Insurance Law 1st Ed, pp 92 93 and *see* also Note 9 U S 2 and Notes 4 and 5 under S 14 *supra*

The expression "holders of life insurance policies in India" means that the contract of life insurance in respect of those policies is made in India and hence ordinarily the life insurance contract should be made or completed or the policy was delivered and accepted or the first premium or other premiums were generally paid in India, as the place of contracting is generally determined by the law of the forum But there is no bar to the parties to contract that the law of different place to govern Even in such cases when the contract is made in India the holder of a policy will be "the holder of life insurance policy" in India within the meaning of this section

(iii) *"Liability on policies of life insurance maturing for payment"* —The expression "liability on policies of life insurance maturing for payment" may be termed in the accounting parlance as "fixed liability" In accounting it is not possible to distinguish definitely between current and fixed liabilities A liability that is to be paid within a shorter period, say within a year after it is incurred, is usually considered to be a current liability while if a liability be not to be paid within one year or so after it is incurred, it is usually considered to be a fixed liability A fixed liability that is due in the current year and that is to be liquidated rather than renewed should be moved into the current liabilities group Likewise, "liability on policies of life insurance maturing for payment" when moved into the current liabilities it becomes "liabilities to holders of life insurance policies on account of matured claims"

(iv) *"The days of grace for payment have not expired"* —In computing the amount required to meet the liabilities on policies of life insurance maturing for payment, clause (*b*) (i) of sub-section (1) provides deduction to be made of the amount of premiums due but not paid and of which the days of grace for payment have not expired The reason being that an insured according to the terms of policy is entitled to pay the premiums due within the days of grace Most policies allow a certain number of days, *e g*, 30 days in case of yearly or half-yearly premiums and 15 days in case of quarterly premiums beyond the dates for the payment of premiums These days are known as "days of grace"[1] The position of the insurer *vis a vis* the claimant where the assured dies during the days of grace and before the payment of a renewal premium is not free from doubt In *Pritchard* v *Merchant's Life*[2] where the policy was revived both after the days of grace had expired and after the death of the assured in terms of an arrangement in the policy and it was held that the insurers were not liable But in *Stuart* v *Freeman*[3] where the assured died within the days of grace and a quarterly instalment was duly paid later by an assignee of the policy and it was held he was entitled to recover This conflict may be placed beyond doubt when a life policy provides expressly that the insurers will be liable in the event of death during the days of grace, but before payment of the premium In modern policies provision is made for the automatic non-forfeiture of the policy by the application of the surrender value towards payment of premium until the surrender value is exhausted[4]

(v) *"Loans granted within the surrender values of policies"* —In computing the amount required the liabilities of policies maturing for payment, clause (6) (ii) of sub-section (1) allows another deduction, namely, the amount due to the insurer for loans on policies within their surrender values The

1 See *Salvin* v *James* (1805) 6 East 571 *Firth* v *Western Life Assurance* (1937) 8 D L R (2d) 129 Can Sup Ct *Mc Kenna* v *City Life* (1919) 2 K B 491

2 (1858) 3 C B N S 622.

3 (1903) 1 K B 47, *see* also *New York Life* v *Statham* (1876) 93 U *Savings Life* v *Taylor* (709

4 *See* also under premium in Note 14 *supra*

"surrender value" of the policy is computable actuarially Insurers generally accept surrender of the policy for such a consideration and hence it is known as the 'surrender value" Alternative conditions are generally found in the policy to the effect that the insurer is to keep the policy on foot as a current policy by applying any surrender value towards the payment of unpaid premiums until the surrender value is exhausted or to issue a paid up policy of a lesser amount [1] But the question of surrender value will not arise in a case where the insured gives his option to a fully paid-up policy of a reduced amount on account of non-payment of premium [2] When surrender value is applied to keep the policy in force, the amount so applied is treated as a loan and it carries interest also

5 **Manner of investments** —The manner in which the assets of the life insurance business are to be invested or kept invested has also been provided in sub section (1) of this section The manner of such investments will be as follows

(*a*) twenty-five per cent in Government securities ,

(*b*) twenty-five per cent at least in Government securities or other approved securities , and

(*c*) the balance, *viz* , fifty per cent in approved investments specified in sub section (1) section 27A or in sub-section (2) of that section but subject to the limitations, conditions and restrictions mentioned in that sub section [3]

Hence, of the investments to be made at least 25 per cent of them must be in Goverment securities and the next 25 per cent may be invested at the option of the insurer either in Government securities or approved securities as defined respectively in sub-sections (3) and (7) of section 2 and the rest may be invested in approved investments specified either in sub-section (1) or sub-section (2) of section 27A But an insurer investing all his assets either in Government securities wholly or in Government securities or approved securities of which 25 per cent must be Government securities need not invest in 'approved investments' at all

6 **Assets to be invested computation and determination of sub-sections (2) and (3)** —Sub-sections (2) and (3) of this section lay down the criteria by which assets to be invested or kept invested for the purposes of sub-section (1) are to be determined and computed For the determination of such assets, the amount of deposit made under section 7 or section 97 should be taken to be assets invested or kept invested, that is, if at a certain date the assets to be invested when determined in terms of sub-section (1) of this section do not exceed or they are equal to the assets already in deposit under section 7 or section 98, the insurer need not keep the assets invested as they are fully covered by the deposit in Government securities The investments made in the securities of or guaranteed as to principal and interest by the Government of the United Kingdom shall be regarded as approved securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, *i e* , 1st June, 1950 in the manner following

(i) 25 per cent in value of the sum referred to in sub-section (1) during the first year

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1 *See Equitable Life Assurance Society of the U S v Ives* (1914) A C 798

2 In respect of provisions for surrender value in some American policies *see Williams v Union Central Ins Co* (1933) 291 U S 140

3 For 'approved investments' *see* Note under S 27 *post*

(*ii*) 18¾ per cent in value of the said sum during the second year,

(*iii*) 12½ per cent in value of the said sum during the third year, and

(*iv*) 6¼ per cent in value of the said sum during the fourth year

It has already been noticed in the foregoing Note 5 that, of the investments to be made under sub-section (1), 75 per cent has to be invested in "approved securities" or "approved investments" But at the date of such investments the insurer has securities of U K Government, he need not invest 75 per cent of his assets in "approved securities" or "approved investments" but may invest in those securities or investments less the percentage in value of the said assets as already invested in securities of U K Government in the graded manner as indicated above for a period of four years since 1st June, 1950

Proviso to sub section (2) (*b*) also empowers the Central Government to direct, in any case, extension of the period of four years to a further period not exceeding six years in all, to treat the securities of U K Government as "approved securities" When such extension is given by the Central Government the insurer holding such securities may not invest all his assets in approved securities or investments to the extent and the manner specified in the Government order till the said extended period

Clause (*c*) of sub-section (2) of this section also provides that any prescribed assets as may be prescribed shall be deemed to be assets invested or kept invested in approved *investments specified in sub section (1)* of section 27A In such cases, any insurer having kept invested in approved investments need not invest the balance of his assets as required in sub-section (1) in approved investments to the extent of those prescribed assets

In *Superintendent of Insurance* v *Navabharat Insurance Co, Ltd*,[1] it has been observed that the scheme of this section is that the gross liabilities are to be taken and then the amount of deposits made under section 7 are to be deducted because to that extent the liabilities are covered and further the amount of the loans is to be deducted because to that extent the policies have been in effect already discharged, and the balance represents the uncovered liability of the insurer, and, on those uncovered liabilities, the deposit of 55 per cent has to be made, 25 per cent of such uncovered liabilities to be invested in Government securities and 30 per cent in approved securities According to the scheme laid down in this decision the assets to be invested may be represented by the formula thus Gl−(Gs+pl)=A, where 'Gl' stands for gross liabilities, 'Gs' for Government securities or securities of U K Government and 'pl' for loans on policies and 'A' for assets to be invested But reading the said two sub sections namely, (1) and (2), the assets to be invested may be represented by the formula thus, X=A−(Gs+Su+Ps), *where* 'X' *stands for assets to be invested* 'A' for assets determined under sub section (1) 'Gs' for Government securities mentioned in clause (*a*) of sub section (2), Su,' for securities of U K mentioned in clause (*b*) of sub-section (2) and Ps' for prescribed assets mentioned in clause (*c*) of sub-section (2)

Sub section (3) of the section prescribes how the assets, referred to in sub-section (1) are to be computed In computing such assets the following should not be taken into account, namely,—

(*a*) any excess found in converting the amount of any investment from any currency to Indian rupee, and

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1 45 Bom L R 41 1943 Bom 81 205 I C 200

(*b*) any investment made in the purchase of any immovable property outside India or on the security of any such property

But for the operation of sub section (2) the provisions contained in this sub section shall not in any way affect it This is what first proviso to sub-section (3) provides Second proviso to sub section (3) further empowers the Central Government either generally or in any particular case, to direct any investment to be taken into account in computing the assets referred to in sub section (1) irrespective of whether such investment is made in or outside India or whether made before or after the commencement of Insurance (Amendment) Act, 1950 But in so directing the Central Government has also been empowered to impose conditions thereon When such a direction is issued by the Central Government the proviso further enjoins on the Central Government to lay before the Parliament copies of such direction as soon as may be after it is issued

7 Proportional adjustments in cases of re assurance, accepted or ceded, sub section (4) —Sub-section (4) of this section provides that the sum to be invested or kept invested according to sub-section (1) shall be increased by the amount of the liability involved when an insurer has accepted re-assurance in respect of any policies of life insurance issued by another insurer Similarly, the said sum shall be decreased by the amount of the liability involved when he has ceded re-assurance to another of any such policies issued by himself But this proportional adjustment either increase or decrease, in the amount as the case may be, in respect of policies of life insurance maturing for payment in India and not in respect of matured claims

8 Investments to be kept free from all charges, etc , sub-section (5) —Sub-section (5) of this section further lays down the condition under which assets under sub-section (1) in Government securities and other approved securities have to be invested and kept invested and should be held by the insurer This sub-section provides in mandatory language that all those Government securities and other approved securities must be held by him free of any encumbrance, charge, hypothecation or lien, that is to say, these securities must always remain unencumbered

(i) *Incumbrance* —The word "incumbrance" has been defined to be "a claim lien or liability attached to property " (Wharton s Law Lexicon) or it may be defined to be 'any right to or any interest in, land which may subsist in a third person to the diminution of the value of the land and not inconsistent with the passing of fee in it by a deed of conveyance" (Bouvier, Law Dictionary) 'Incumbrance includes a mortgage in fee, or for a less estate, a trust for securing money, and a lien, and a charge of a portion, annuity or other capital or annual sum , and incumbrancer has a meaning correspondingly with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof "[1]

(ii) *Charge* —No technical or particular forum of words is necessary to create a charge All that is necessary to create a charge is that there must be a clear intention to make a particular property, a security for the payment of money For creating a charge on movables the property must be specifically indicated [2] "A charge does not involve the transfer of the interest in the property subject thereto and arises from the circumstances that certain property

1 *See* S 205 of the English Law of Property Act 1925 ; *see* S 57, Transfer of Property Act

2 *Bholanath v Sarba Mangala*, 1910 Cal 861 I C 843

movable or immovable, or any interest in such property, is indicated with certainty as the fund out of which a certain claim is to be met or satisfied, the fund so indicated being the security for the claim "[1]

(*iii*) *Hypothecation* —The words "hypothecation" and 'pledge' are synonymous The bailment of goods as security for payment of a debt or performance of a promise is called "pledge" (section 172, Indian Contract Act) A transfer of possession is necessary to complete a pledge It must be a juridical possession , mere physical possession is not sufficient Delivery may be actual or constructive but should be in a reasonable time after the advance [2]

(*iv*) *Lien* —Lien is a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied (Wharton's Law Lexicon) The difference between a lien and a pledge is that (*i*) the former gives a right to retain possession until the claim is satisfied but the right is lost with the loss of possession, and (*ii*) the latter is a bailment of goods as security for debt and gives the right to sell without agreement after default but lien is not sufficient to warrant sale

9 **Investments by foreign insurance companies, sub section (6) —** Sub-section (6) of this section lays down the procedure how an insurer incorporated or domiciled outside India should hold the assets required to be invested under this section For the purposes of this sub-section even an insurer incorporated in India will be treated as an insurer incorporated outside India where its share capital is owned by members domiciled elsewhere than in India to the extent of one third in the least or the members of its governing body consist of one third of the members domiciled elsewhere than in India The intention of the Legislature in appending the explanation to this section is not intelligible as neither the members holding one-third of the share capital nor the members consisting of one-third of the governing body can control the management of the company as such proportion in the share capital and in the management is always in minority Moreover, where the insurer is incorporated in India the law in India will always govern it whether its members are Indians or non-Indians

This sub-section requires the foreign insurers to keep or to be kept their assets invested in India save and except any part of such assets which consists of foreign assets held outside India Moreover, such assets shall be held in trust for the discharge of the liabilities referred to in sub-section (1), namely, liabilities on life insurance policies in India of matured claims and liabilities of like policies maturing for payment in India These assets shall be vested in trustees resident in India and approved by the Central Government For this purpose an instrument of trust has to be prepared and executed by the insurer with the approval of the Central Government Further, the trust deed must define the manner in which alone the subject-matter of the trust shall be dealt with

Further provisions regarding investment

27A (1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely,—

(*a*) approved securities ,

(*b*) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom ,

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1 *Nathan Lal* v. *Durga Das* 52 All 985 [1961 All 62 at p 64 *see* also S 100 Transfer of Property Act

2 *Seagor* v. *Hukma Kessa* 24 Bom 458, *Hilton* v. *Tucker* 29 Ch D 669

ıtures or other securities for money ıssued with permission of the State Government by any

(c) debe nicipality in a State ,

the ntures or other securities for money ıssued by any Mu hority constituted under any housing or building

(d) deb eme approved by the Central or a State Govern aut ht, or by an authority or body constituted by any sch tral Act or Act of a State Legislature ,

men nortgages on immovable property situated in India Cen er any housing or building scheme of the insurer

(e) first r roved by the Central Government or a State und ernment ,

app ntures secured by a first charge on any immovable Gov perty, plant or equipment of any company which

(f) debe paid interest in full for the five years immediately pro eding or for at least five out of the six or seven has s immediately preceding on such or similar deben prec ıssued by it ,

yea ntures secured by a first charge on any immovable ture erty, plant or equipment of any company where

(g) debe r the book value or the market value, whichever pro s, of such property, plant or equipment is more eithe three times the value of such debentures ,

is les debentures secured by a floating charge on all its thans of any company which has paid dividends on

(h) first c ordinary shares for the five years immediately asset eding or for at least five out of the six or seven its c s immediately preceding ,

prec ence shares of any company which has paid year lends on its ordinary shares for the five years

(i) prefer ediately preceding or for at least five out of the divid r seven years immediately preceding ,

imm ence shares of any company on which dividends six o been paid for the five years immediately preced

(j) prefer or for at least five out of the six or seven years hav diately preceding and which have priority in ing ent over all the ordinary shares of the company imm nding up ,

pay of any company which have been guaranteed in w other company, such other company having paid

(l) shares nds on its ordinary shares for the five years by a diately preceding or for at least five out of the divid seven years immediately preceding ,

imm

six o

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid-up amount of preference and ordinary shares of the guaranteeing company ,

(*l*) shares of any company on which dividends of not less than four per cent including bonus have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding ,

(*m*) first mortgages on immovable property situated in India or in any other country where the insurer is carrying on insurance business

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds by one-half the mortgage money ,

(*n*) immovable property situated in India or in any other country where the insurer is carrying on insurance business

Provided that the property is free of all encumbrances ,

(*o*) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability ,

(*p*) life interests ,

(*q*) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India, 1934 (Act II of 1934), or with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered,

(*r*) debentures of, or shares in, co operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force ,

(*s*) such other investments as the Central Government may, by notification in the official Gazette, declare to be approved investments for the purposes of this section

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (*b*) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if—

(*i*) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent of the sum referred to in sub section (1) of section 27,

(*ii*) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting, and eligible to vote, special notice of which has been given to all the directors then in India and all such investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the director's interest in any such investment

(3) An insurer shall not, out of his controlled fund, invest or keep invested in the shares of any one banking company or invest ment company more than—

(*a*) two-and-a-quarter per cent of the sum referred to in sub-section (1) of section 27, or

(*b*) two per cent of the subscribed share capital and debentures of the banking company or investment company concerned,

whichever is less

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than—

(*a*) two-and-a-quarter per cent of the sum referred to in sub-section (1) of section 27, or

(*b*) ten per cent of the subscribed share capital and debentures of the company, whichever is less

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Central Government by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business

(5) An insurer shall not out of his controlled fund invest or keep invested any sum in the shares or debentures of any private limited company

(6) Where an investment is in partly paid up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (*a*), sub-section (3) and clause (*a*) of sub-section (4)

(7) Notwithstanding anything contained in sub-sections (3) and (4), where new shares are issued to the existing shareholders by a company the existing shares of which are covered by clause (*i*) or clause (*k*) or clause (*l*) of sub section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription

(8) If, on an application submitted through the Controller, the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7)

(9) An insurer shall not keep more than three per cent of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one co-operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force and doing banking business

Provided that in applying this sub-section to the amount in deposit with a banking company on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded

Provided further that the Controller may permit a co-operative life insurance society as defined in clause (*b*) of sub-section (1) of section 95 to keep more than three per cent of its controlled fund in fixed deposit with any co-operative society referred to in this sub-section, if the fixed deposit is secured by a first mortgage on any immovable property

(10) All assets forming the controlled fund, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with section 27,

(except for a part thereof not exceeding one-tenth of the controlled fund in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien

(11) If at any time the Central Government considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable or undesirable, the Central Government may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Central Government

(12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments or any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Controller a report specifying all such investments, and, if the Central Government is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, it may, by order, direct that the provisions of this section [other than the provisions contained in sub-section (11)] shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order

(13) Without prejudice to the powers given to the Central Government by sub section (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of this Act which, after the making thereof, has ceased to be an approved investment within the meaning of this section

(14) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act or Act of a State Legislature

Explanation —In this section "controlled fund" means

(*a*) in the case of any insurer specified in sub-clause (*a*) or sub-clause (*b*) of clause (9) of section 2 and carrying life insurance business—

(*i*) all his funds if he carries on no other class of insurance business,

(*ii*) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also, and

(*b*) in the case of any other insurer carrying on life insurance business—

(*i*) all his funds in India, if he carries on no other class of insurance business,

(*ii*) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also,

but does not include, any fund or portion thereof, in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of this section

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10 *Saving clause, sub-section* (14) *—Provisions under the Companies Act*, 1956
11 *'Controlled fund,' meaning of*
12 *'Investment,' meaning of*

1 Legislative changes—(*a*) This section was inserted by Act XLVII of 1950

(*b*) The word "India" occurring in the section was substituted by Act LXII of 1956

2 Applicability—The provisions of this section are applicable to both Indian and non-Indian insurers but in case of the latter the Central Government has been empowered when reported to by the Controller to direct that some provisions of this section will not apply to them for such period as may be specified in the order This section has been applied to Life Insurance Corporation of India after diverse modifications having been made [1]

3 Scope and object—The object of this section is to keep under effective control the dealings of life insurance money derived from such business All liquid assets in such business have been termed as 'controlled funds' and this section prescribes the manner in which such funds are to be invested and kept invested This section has to be read along with

1 *See* S 43 (2) and G S R, 734, dated 25th August 1958 under L I C Act,

as under the latter section, the assets in respect of life insurance business to be invested or kept invested have to be invested in Government and approved securities to the extent of fifty per cent of those assets and the balance in the other fifty per cent has to be invested in 'approved investments' This section says what these 'approved investments' are Hence this section, so to say, completes the foregoing section 27

This section has classified these 'approved investments' into as many as eighteen categories but even then this classification cannot be said to be exhaustive as authority has been conferred on the Central Government to declare other investments as 'approved investments' While enumerating the numerous categories of 'approved investments' this section also puts restrictions on the power of the insurer to invest his funds Moreover, the 'expression 'controlled fund' has been defined in this section by introducing an explanation to the section The 'controlled fund' of an insurer has been allowed to be invested and held in some of the 'approved investments' enumerated in 'clauses (a) to (r) of sub-section (1) except to the extent of 15 per cent thereof which may be invested otherwise than in those 'approved investments' subject to the restrictions made in sub-section (2)

Where under the articles of Association of an Insurance Company, the directors were authorised to invest the policy-holders' trust fund by a unanimous resolution "in the purchase of house property," it was held that the "purchase of house property" in the articles of association would include construction of a new building and the policy-holders had no right to interfere with it[1] In the same case it has also been observed that it may be that the policy holders have a right to intervene if the company dissipates or wastes or diverts the funds out of which they expect to be paid the amounts assured to them on the maturity of their policies But in the absence of any proof of wastage or dissipation, the form of investment is a matter for the directors to decide, subject to their powers in the matter of investment

4 What are 'approved investments', their nature, sub-section (1) (a) to (r) —Sub-section (1) enjoins that an insurer must invest or keep invested any part of his controlled fund in any of the approved investments enumerated in clause (a) to clause (r) of the said sub-section These 'approved investments' may be of various kinds, such as follows

(a) approved securities[2]

(b) securities of the Government of United Kingdom or any securities guaranteed as to principal and interest by that Government, likewise under the English Assurance Companies Rules 1910, Indian guaranteed railway stocks or shares are 'authorised securities' within the meaning of the said Rules[1]

(c) debentures or other securities for money issued

(i) with the permission of the State Government by any Municipality in a State or

(ii) by any authority constituted under any housing or building scheme approved by the Central or a State Government or by an authority or body constituted by any Act of the said Governments similarly, guaranteed land stock issued under

1 *Duraiswami Iyengar v United India Life Assurance Co Ltd* (1956) 1 M L J 344 69 M L W 37 1956 Com Cas (Inf) 12 1956 Mad 316

2. *See* Note 8 under S 2 *supra*

the Purchase of Land (Ireland) Act, 1891, or under the Irish Land Act, 1903, or under the Irish Land Act, 1909, are authorised securities within the meaning of the English Assurance Companies Rules, 1910,

(*d*) first mortgages on immovable property situated in India

(*i*) under any housing or building scheme of the insurer approved by the Central or a State Government, or

(*ii*) on such mortgages, or

where the immovable property situated in any other country where the insurer is carrying on insurance business,

(*iii*) on such mortgages of the property, which should not be a leasehold property with an outstanding term of less than thirty years and the value of the property exceeds by one-third the amount advanced on mortgage, and when it consists of buildings, the value exceeds one-half the mortgage money,

(*e*) immovable property itself situated in India or in any other country where the insurer is carrying on insurance business when that property is free from all encumbrances,[1]

(*f*) debentures or first debentures,

(A) secured by a first charge on any immovable property, plant or equipment of any company,—

(*i*) which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it, or

(*ii*) where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures,

(*B*) secured by a floating charge on all its assets and paying dividends on its ordinary (equity) shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding or

(*C*) of the co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force,

(*g*) preference shares of any company,

(*i*) which has paid dividends on its ordinary (equity) shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding or

(*ii*) which has paid dividends on those shares for like period as above and which have priority in payment over all the ordinary (equity) shares of the company in winding up,

(*h*) shares

(*i*) in co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force,

(*ii*) of any company

1 For meaning of encumbrance *see* Note 8 (*i*) under section 27

(A) on which dividends, at least 4 per cent including bonus have been paid for the seven years immediately preceding or for seven out of the eight or nine years immediately preceding, or

(B) which have been guaranteed by another company and paid dividends on its ordinary (equity) shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and the total amount of shares does not exceed 50 per cent of the paid up amount of preference and ordinary (equity) shares of the guaranteeing company,

(i) life interests or

(1) loans on such interests, or

(11) on policies of life insurance within their surrender values,

(j) fixed deposits,

(1) with scheduled banks, or

(11) with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered

5 **Investments other than in 'approved investments', permissibility of, sub section (2)** —Sub-section (2) of this section permits an insurance company or a co-operative life insurance society as defined in this Act to invest or keep invested any part of its controlled fund in other investments than in the 'approved investments' under the conditions following—

(i) the total amount of its investments other than in 'approved investments' must not exceed 15 per cent of the sum which it is required to invest in 'approved investments,' that is of 50 per cent to be invested in 'approved investments,' it can or has the option to invest 15 per cent and not more in other investments of its choice but even such investments must be made subject to restrictions made in respect of 'approved investments' in this section,

(ii) when investment is made or its continuance in case where already made, is with the consent of all directors present at a meeting and eligible to vote and special notice of which has been given to all the directors then in India with full disclosure of any investments in which any director is interested and

(iii) when full details of the investments together with the director's interest, if any, are reported to the Controller without any unreasonable delay

6 **Restrictions in investments on 'approved investments', sub sections (3) (4) (5) (6) and (9)** —Sub-sections (3) to (6) of this section lay down the restrictions imposed on the power of the insurer, to invest in 'approved investments', conferred on him under sub-sections (1) and (2) of this section. Restrictions imposed on him are as follows

(i) *in respect of shares or debentures*—he is precluded from investing any of his controlled fund (*a*) in shares or debentures of any private company or (*b*) in the shares or debentures of any one company other than

a banking company or investment company more than $2^1/_4$ per cent out of his total investments of 5) per cent or 10 per cent of the subscribed share capital and debentures of the company, whichever is less, or (*c*) in the shares of any one banking company or investment company more than $2^1/_4$ per cent out of his total investments of 5) per cent or 2 per cent of its subscribed capital and debentures, whichever is less,

(ii) *in respect of partly paid up shares* —When investment in partly paid-up shares is made the percentage, namely, $2^1/_4$ per cent permissible as stated in (i) shall be computed by adding the uncalled liability on such shares,

(iii) *in respect of fixed or current deposits, and partly fixed and partly current deposits with any bank or co-operative society* —The bank is precluded from keeping in such deposits more than 3 per cent of the controlled fund But in computing the amount in such deposit or deposits the premiums collected by the bank or the co-operative society doing banking business on behalf of the insurer during the preceding thirty days shall be excluded The Controller has also been empowered to relax this restriction in respect of co-operative life insurance society as defined in this Act if the fixed deposit is secured by a first mortgage on any immovable property Similarly, the Central Government has been empowered to relax the restrictions referred to in sub-section (4) when the investment in the shares or debentures of any company is made with a view to forming a subsidiary company carrying on insurance business

(iv) *in respect of new shares being issued to the existing shareholders of which the insurer is a member who has already invested as permitted under this section* — In such cases, the insurer is permitted to subscribe to the new shares in the same proportion as the paid-up amount on the shares held by him bears to the total paid up capital at the time of subscription [*see* sub-section (7) of this section]

(v) *in respect of all assets forming the controlled fund* —The insurer must hold the assets invested in 'approved investments' or in other investments permissible to the extent of 15 per cent of the 'approved investments' free of any encumbrance, charge, hypothecation or lien, except for a part thereof not exceeding 1/10th of the controlled fund in value which may be offered as security for any loan taken for purposes of any investment subject to any prescribed conditions and restrictions [1]

7 Powers of the Central Government, sub-section (1) (s), sub-section (8), sub-section (11) —Various powers have been conferred on the Central Government under this section They are as follows

(i) *Power to declare other investments as 'approved investments'* —The Central Government has been empowered to declare, by notification in the official *Gazette*, other investments than enumerated in clauses (*a*) to (*r*) of sub-section (1) of this section to be 'approved investments' for the purposes of this section [2]

(ii) *Power to exempt an insurer from all or any of the provisions of sub sections* (3), (4) *and* (7) *of this section* —Sub-section (8) of this section empowers the Central Government to exempt an insurer from all or any of the provisions of sub section (3) relating to investments in the shares of any one banking or investment company sub-section (4) relating to investment, in the shares or debentures of any one company other than a banking or investment company and sub-section (7) relating to investment of new shares issued to the insurer as member thereof Any insurer desiring to be exempted from the operation of

1 *See* sub-section (10) of this section

2 Sub-section (1) (*s*) of this section

those sub-sections must submit an application to that effect to the Central Government through the Controller and before granting such exemption, the Central Government must be satisfied that special grounds exist for warranting such exemption When the Central Government is so satisfied, it has the discretion to exempt the applicant as provided in sub section (8) but in granting such exemption, it has also powers to specify the period, the extent the particular investments and conditions with regard to its order of exemption

(*iii*) *Power to direct an insurer to realize any investment* —Sub-section (11) of this section empowers the Central Government to direct any insurer to realise the investment or investments made in respect of his controlled fund But before issuing any direction under this sub section, the Central Government must give the insurer concerned an opportunity of being heard in the matter of those investments or any of them and the Central Government on consideration thereof must be satisfied that any one or more of the investments of his controlled fund is or are unsuitable or undesirable in the circumstances of the case

(*iv*) *Power to direct non-applicability of the provisions of this section other than those contained in sub-section (11)* —Sub-section (12) of this section further empowers the Central Government to direct by an order that the provisions of this section except those contained in sub-section (11) thereof shall not apply in relation to any investments or to any class of investments generally, contravening the provisions of this section at the commencement of the Insurance (Amendment) Act, 1950, *i e* 1st June, 1950, for such periods as may be specified in the order But before issuing any direction under this sub-section, the Central Government must be satisfied on a report from the Controller that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments

(*v*) *Power to accord consent to an insurer desirous of forming a subsidiary company for the purpose of carrying on insurance business for non applicability to it of the provisions of sub-section (4)* —See Note 6 (*iii*), *supra*

8 **Powers and duties of the Controller** —The powers of the Controller under this section are as follows

(i) Second proviso to sub section (9) empowers the Controller to permit a co-operative life insurance society within the meaning of clause (6) of sub-section (1) of section 95 of this Act to keep more than 3 per cent of its controlled fund in fixed deposit with any co operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force and doing banking business when the said fixed deposit is secured by a first mortgage on any immovable property

(ii) The Controller has further been empowered to exclude any fund from forming the 'controlled fund' of the insurer which would have been so included but for his order of exclusion But in exercising the power, the Controller must be satisfied (*a*) that such fund which he is to exclude is regulated by the law of any company outside India, or (*b*) that it would not be in the interest of the insurer to apply the provisions of this section to such fund (*see* Note 9 under section 27 *supra*)

The duties of the Controller under this section are as follows :

(i) He will receive the report from the company investing 15 per cent of the controlled fund in other investments than in 'approved investments

(ii) He will receive the application of an insurer submitted through him to the Central Government for exemption under sub section (8) and forward the same to the Central Government

(iii) He will receive the report from any insurer existing at the commencement of the Insurance (Amendment) Act, 1950, within 90 days from the said date, *i e*, 1st June, 195), when the insurer's investments or any part thereof contravenes the provisions of this section and shall forward to the Central Government the same specifying all such investments

9 **When the insurer is not required to realise any investment, sub-section (13)** —Sub section (13) of this section provides that an insurer will not be required to realise any investment made by him in accordance with the provisions of sub-section (1) of this section after the commencement of this Act, *i e*, 1st July, 1939, although after such investment it has ceased to be an 'approved investment' within the meaning of this section That is to say, when an investment under this section has been made as an approved investment' under this Act subsequent declaration of that investment ceasing to be an 'approved investment' will not oblige the insurer to realis the investment and to re-invest it in some other 'approved investment' But this right of the insurer is without prejudice to the powers given to the Central Government by sub-section (11) to direct him to realise any investment within a time as may be specified in the order In other words, even though an insurer is not ordinarily required to realise his investment in case of such investment ceasing to be 'approved investment', yet he will be bound to realise such investment when an order to that effect is made by the Central Government But in such a case also the Central Government must also give the insurer an opportunity of being heard in the matter [*see* also Note 7 (iii) *supra*]

10 **Saving clause, sub-section (14)** —Sub-section (14) of this section saves any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature from being invested in 'approved investments' under this section but that those moneys are to be kept invested or held as required to be kept or held under any Central Act or Act of a State Legislature In other words, these moneys must not be affected in any way as to the manner of their being kept and invested because of the provisions of this section

(i) *Provisions in the Companies Act, 1956* —With regard to the employees' securities and provident funds, sections 417 and 418 of the Companies Act, 1956, have made provisions therefor Thus under section 417 of the said Act, a company is required to keep or deposit any money or security deposited with it by any of its employees in pursuance of his contract of service (*a*) in a post office savings bank account, or (*b*) in a special account in the State Bank of India or in a Scheduled Bank and no portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contract of service Similarly section 418 of the said Act provides amongst others that where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund shall either (*a*) be deposited in a post office savings bank account or in a special account in the State Bank of India or in a Scheduled Bank, or (*b*) be invested in the securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Indian Trusts Act, 1882

11 **"Controlled fund," meaning of** —The expression 'controlled fund' for the purposes of this section has been given different meanings in respect of insurers specified in sub clause (*a*) (ii) or sub clause (*b*) of clause (9) of section 2

and other insurers defined in that section, but both the classes must carry on life insurance business In respect of any insurer within the meaning of sub-clause (*a*) (*ii*) or sub clause (*b*) of clause (9) of section 2, *i e*, insurer having his or its principal place of business or is domiciled in India or a body corporate incorporated in India under the Companies Act, the 'controlled fund' means

(*i*) all his funds, if he carries on no other class of insurance business,

(*ii*) all the funds appertaining to his life insurance business, if he carries on some other class of insurance business also

But in respect of any other insurer carrying on life insurance business, the "controlled fund" means—

(*i*) all his funds in India, if he carries on no other class of insurance business,

(*ii*) all the funds in India appertaining to his life insurance business, if he carries on some other class of insurance business also

But the 'controlled fund' does not include any fund or portion thereof in respect of which the Controller has excluded same to be the 'Controlled fund'[1]

12 "Investment," meaning of —The word 'investment' is not a word of art but has to be interpreted in a popular sense It is not capable of legal definition but a word of current vernacular[2] The word is to be interpreted in a broad sense to include besides the laying in stocks, shares and securities, the application of the money in the purchase of some property from which interest or profit is expected and which property is purchased in order to be held for the sake of income which it will yield[3]

Return of investment of assets

28 (1) Every insurer carrying on the business of life insurance shall every year, within thirty one days from the beginning of the year, submit to the Controller a return, showing as at the 31st day of December of the preceding year the assets held invested in accordance with section 27, and all other particulars necessary to establish that the requirements of that section have been complied with, and such return shall be certified by a principal officer of the insurer

(2) Every such insurer shall also furnish, within fifteen days from the last day of March, June and September, a return certified as aforesaid showing as at the end of each of the said months the assets held invested in accordance with section 27

(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub section (1) of section 27, an insurer shall submit along with the returns referred to in sub-sections (1) and (2) a certificate, where such assets are in the custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or otherwise

1 *See* Note B *supra re* Powers of the Controller

2 *Inre* Life Insurance Company's Deposit Fund [1936] All E R 55

3 *Re* Bragg (1911) 2 Ch 58 ; *see also* Westcott *v* Scindia Steam Navigation Co, 1941 L R 131,

from a principal officer of the insurer, to the effect that the securities are held free of any encumbrance, charge, hypothecation or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held

(2B) In respect of the assets forming the controlled fund within the meaning of section 27A, and which do not form part of the Government securities and approved securities invested and kept invested in accordance with section 27, an insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer if the insurer is a company, or from a principal officer of the insurer if the insurer is not a company, specifying the assets, which are subject to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated

(3) The Controller may at his discretion require any insurer to whom sub-section (1) applies to submit before the 1st day of August in each or any year a return of the nature referred to in sub-section (1) certified as required by that sub section and prepared as at the 30th day of June

(4) In the case of an insurer having his principal place of business or domicile outside India, the Controller may, on application made by the insurer, extend the periods of fifteen and thirty-one days mentioned in the foregoing sub-section to thirty days and sixty days respectively

(5) The Controller shall be entitled at any time to take such steps as he may consider necessary for the inspection or verification of the assets invested in compliance with section 27 or for the purpose of securing the particulars necessary to establish that the requirements of that section have been complied with The insurer shall comply with any requisition made in this behalf by the Controller and if he fails to do so within two months from the receipt of the requisition, he shall be deemed to have made default in complying with the requirements of this section

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1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *"Submit to the Controller a return" annual return sub section* (1) *—Contents of the return*
5 *Quarterly return, sub-section* (2)
6 *Accompaniment of the returns, sub-sections* (2A) *and* (2B)

7 *Powers of the Controller, sub sections* (3), (4) *and* (5)
(A) *His discretionary powers—*
(i) *Half-yearly return, sub section* (3)
(ii) *Extension of periods for submission of returns, sub section* (4)
(B) *His mandatory powers, sub-section* (5)

1 Legislative changes —(*a*) Sub-section (1) was substituted for the original sub-section (1) by Act XIII of 1941

(*b*) The words "registered under this Act" originally occurring in sub-section (1) were *omitted* by Act XLVII of 1950

(*c*) The word "Controller" occurring in the section was substituted by Act XLVII of 1950, and the word "return" occurring in the section was substituted by Act VI of 1946

(*d*) Sub-sections (2A) and (2B) were inserted by Act XLVII of 1950

(*e*) The word "India" occurring in sub section (4) was substituted by Act LXII of 1956

(*f*) Sub section (5) was re numbered (5) by Act XIII of 1941

(*g*) The words "or for the purpose of have been complied with" occurring in sub-section (5) were inserted by Act XX of 1940, and the words "The insurer shall comply with with the requirements of this section" occurring in the said sub section were substituted for the words "and the insurer shall comply with all requisitions made by the Superintendent in that behalf" by Act XX of 1940

2 Object and scope —The object of this section is to keep the Controller informed of the assets of the insurers held invested in accordance with section 27 and also of the investments of the assets forming the controlled fund within the meaning of section 27A By such information the Controller would know whether due compliance of the provisions of sections 27 and 27A are being made by the insurer, or whether there is any deviation or default in their due compliance This section is, so to say, a sanction behind the foregoing sections 27 and 27A Returns contemplated under this section are also statutory returns and an insurer is bound to submit the returns in compliance with this section lest his certificate of registration may be liable to be cancelled for default in complying with the requirements of this section

Unlike section 28A following this section the returns under this section need not be submitted in prescribed form but they are to be submitted in the manner as laid down in this section The Controller has been given plenary powers in respect of these returns and time has been prescribed within which such returns are to be submitted Duties have been imposed on the insurer to submit these returns to the Controller The returns must relate to the investments commencing from the 1st of January and ending at 31st December every year These returns should not only contain the particulars but they should also be certified by a principal officer of the insurer Even submission of quarterly returns beginning from the last day of March has been provided for in this section and the insurer is required to furnish them within fifteen days from the last day of each quarter of March June and September In respect of Government or approved securities the insurer is required to submit a certificate that those securities are held free from encumbrance and in respect of approved investments he is also required to submit a certificate mentioning the investments that are subject to charge and those that are free of such charges indicating also the date when such charges are liquidated, if any of such charges is liquidated Even the insurer may be required to submit particulars of his investments twice a year instead of once in a year

when he will be called upon to do so by the Controller The Controller has also been given the power to inspect and verify the assets invested in terms of section 27

3 **Applicability** —The provisions of this section apply to every insurer carrying on life insurance business in India, be he an indigenous or foreign insurer but with regard to the insurer having his principal place of business or domicile outside India, certain privileges in respect of extension of date for filing the returns have been given He may seek such privileges on application from the Controller

4 **"Submit to the Controller a return," annual return, sub section (1)** —Sub-section (1) of this section enjoins on every insurer carrying on life insurance business to submit a return to the Controller of the assets held by him in different investments envisaged under section 27, that is to say, his investments in Government securities to the extent of 25 per cent in Government or other approved securities to the extent of another 25 per cent and in approved investments to the extent of the rest, *viz* , 50 per cent Such return must show those investments of the assets as at the 31st day of December of the preceding year and must be submitted within thirty one days from the beginning of the year that is to say, an insurer showing his investments in the return as at 31st day of December, 1962, must submit it within 31st day of January, 1963 This return has to be submitted every year and hence it can be called an annual return of investments of assets

Contents of the return —This annual return of investments of assets must show firstly, the assets held by the insurer invested in accordance with section 27, and secondly,, all other particulars necessary to establish that the requirements of that section have been complied with Moreover, the return has to be certified by a principal officer of the insurer In submitting the return under this sub-section the insurer should be careful to see that not only the mere particulars of investments should be mentioned but he should also state all the particulars necessary to establish that investments of the assets required to be invested under section 27 have been so invested in compliance with the requirements of that section In other words, the return must show how the assets to be invested or kept invested have been arrived at and their computation thereof, how the liabilities both in respect of matured claims and policies maturing for payment have been arrived at and how the percentage of investments permissible under the prescribed investments have been covered under those investments stating specifically the Government securities, approved securities and approved investments separately giving full detail and particulars thereof

5 **Quarterly return, sub section (2)** —Besides the annual return as aforesaid it is also obligatory on every insurer carrying on life insurance business to furnish to the Controller a quarterly return for three quarters ending respectively on the last day of March June and September every year This quarterly return has to be furnished within fifteen days from the last day of each quarter aforesaid, that is the quarterly return ending March of any year must be furnished within 15th April of that year and so on Such quarterly return must also show the assets held invested in accordance with section 27 at the end of each quarter aforesaid and must be certified by a principal officer of the insurer as in the case of the annual return It is not explicit in this sub-section whether all other particulars necessary to establish that the requirements of section 27 have been complied with will be necessary or not In its absence in the sub section it seems that those particulars are not necessary for a quarterly return but by way of abundant caution such particulars if possible may also be given in the quarterly returns as envisaged

under this sub-section The assets invested in accordance with section 27 must relate to investments made in the three months of each quarter, i e when the return relates to a quarter ending 31st March of any year the investments in the months of January, February and March of that quarter must be shown and so on

6 **Accompaniment of the returns, sub sections (2A) and (2B)**— Certain certificates and statements must accompany both the annual and quarterly returns which are to be sent to the Controller under this section Provisions for these certificates and statements and their nature have been provided for in sub-sections (2A) and (2B) respectively of this section These certificates and statements are to be authenticated by different persons according as the insurer is a company or otherwise

A certificate is concerned only with regard to the Government securities and other approved securities invested and kept invested in accordance with sub-section (1) of section 27 While a statement is concerned only with the assets forming the controlled fund within the meaning of section 27A and which do not form part of the Government securities and approved securities but only form part of the approved investments within the meaning of section 27A

In respect of the Government securities and approved securities, a certificate must state to the effect that the securities are held free of any encumbrance, charge, hypothecation or lien and such certificate must be authenticated,—

(*a*) by the banking company, when such assets are in the custody of the bank ,

(*b*) by the chairman, two directors and a principal officer, when the assets are not in the custody of any bank and where the insurer is a company , or

(*c*) by the principal officer, when the insurer is not a company

Every certificate after the first, i e , all succeeding certificates succeeding the first one must also state that since the date of the certificate immediately preceding all the securities have been held free of all charges whatsoever as held before stated

In respect of the assets forming the controlled fund and invested in approved investments a statement must specify (*i*) the assets which are subjected to a charge (*ii*) which are held free of any encumbrance, charge, hypothecation or lien, (*iii*) if any such charges have been liquidated, the date on which they were so liquidated, and (*iv*) the charges created in respect of any of those assets since the date of the statement immediately preceding in case of succeeding statement after the first one Such statement has also to be authenticated—

(*a*) by the banking company, when such assets are in the custody of the bank ,

(*b*) by the chairman, two directors and a principal officer, where the assets are not in the custody of any bank and the insurer is a company; or

(*c*) by a principal officer of the insurer when he is not a company

Every such statement after the first shall also state and specify (*i*) the charges created in respect of any of those assets since the date of the statement immediately preceding, and (*ii*) the date on which such charges were liquidated if any of such charges is liquidated

7 Powers of the Controller, sub sections (3), (4) and (5) —The Controller has been given discretionary powers by sub-sections (3) and (4) and mandatory powers by sub-section (5)

(A) His discretionary powers are as follows

(i) *Half-yearly return* —He has been given the discretion to require any insurer required to submit an annual return of his assets held invested in accordance with section 27, namely, his investments in Government securities, approved securities and approved investments, to call upon him to submit before the 1st day of August in each or any year a return of those investments of assets just in the manner he is required to submit his annual return in respect of them, and prepared as at the 30th day of June of that year [1]

(ii) *Extension of periods for submission of returns* —He has also been given the discretion to extend the periods of thirty-one days in case of annual return and fifteen days in case of quarterly returns, to sixty days and thirty days respectively But such extension of periods can be granted to those insurers who have their principal places of business or domiciles outside India and when applications for such extensions of the said periods are made to him by them He has no power to extend the statutory periods in the case of any other insurer [2] In exercising these discretionary powers the Controller must act judicially and not arbitrarily

(B) *Controller's mandatory powers* —Mandatory powers have been conferred on the Controller by sub-section (5) of this section These powers entitle him (i) to inspect or verify the assets invested in compliance with section 27, and (ii) to secure the particulars necessary to establish that the requirements of that section have been complied with For the above purposes he has been given the powers to take such steps as he may consider necessary and at any time In regard to these returns the Controller has not been made a mere receiving officer but has been given the powers to verify those returns in relation to the factum of investments and to find out for himself whether the returns state the correct and true state of affairs Any insurer making any false statement in any return is punishable under section 104 of the Act Similarly, penalty for default in complying with or acting in contravention of the Act has been provided in section 102 of the Act The Controller, besides enforcing the provisions of section 110C in requiring the insurer to supply him (with all the informations required, he may also enforce the penal provisions of the Act as taking such steps within the meaning of sub-section (5) with a view to have the inspection or verification of the assets shown in the returns submitted to him

Further it has been provided in the said sub-section (5) that the insurer is bound to comply with any requisition made by the Controller for the above purposes and such requisitions have got to be complied with within two months from the date of receipt of those requisitions On the insurer's failure to comply with any such requisition within the period of two months aforesaid he must be treated as having made default in complying with the requirements of this section In case of such a default the Controller has also the power to cancel the registration of the insurer under clause (*f*) of sub-section (4) of section 3 of this Act

1 See sub-section (3) of this section 2 Sub-section (4) of this section

28A (1) Every insurer carrying on life insurance business, shall every year, within thirty one days from the beginning of the year, submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year the investments made out of the controlled fund referred to in section 27A, and every such return shall be certified by a principal officer of the insurer

Return of investments relating to controlled fund and changes therein

(2) Every insurer referred to in sub-section (1) shall also submit to the Controller a return in the prescribed form showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Returns of investments of controlled fund, annual return*
5 *Changes in the investments, quarterly returns*

1 Legislative changes —Section 28A was newly inserted by Act XLVII of 1950

2 Object and scope —The object of the section is to keep the Controller informed of the investments made by the insurer out of his controlled fund and also changes occurring in those investments from time to time Unlike the foregoing section 28, this section provides that the returns to be submitted in accordance with it have to be submitted in prescribed forms Such forms have been prescribed under rule 10G of the Insurance Rules, 1939

This section contemplates two kinds of returns, namely, (i) annual return of the investments as at the 31st day of December of every year which must be submitted in Form IV-A prescribed under the said Rules, and (ii) quarterly returns of the changes in investments ending at every quarter of March, June, September and December Such returns are to be submitted in Form IV B also prescribed therein

The returns contemplated under this section and the statement in respect of the assets forming the controlled fund required to be furnished under sub-section (2-B) of section 28 are not same but they differ in material particulars Returns under this section are returns of investments and changes therein but the statement under sub-section (2-B) of section 28 relates only to statements as to whether those assets of the controlled fund invested in approved investments are held subject to any encumbrance, charge, hypothecation or lien or free from such charges and whether any such charges have been liquidated and the date when they were so liquidated

3 Applicability —The provisions of this section are applicable to every insurer carrying on life insurance business The section has been applied to ch Life Insurance Corporation of India with certain modifications

4 **Return of investments of controlled fund, annual return, sub-section (1)** —Every insurer carrying on life insurance business must submit the return of investments of controlled fund in Form No IV-A within thirty-one days from the beginning of the year showing the investments as at the 31st day of December of the preceding year Such returns are to be submitted to the Controller every year and every such return must be certified by a principal officer of the insurer

5 **Changes in the investments, quarterly returns, sub section (2)** — Every insurer carrying on life insurance business must also furnish to the Controller a return in Form No IV-B showing all the changes occurring in the investments of his controlled fund during each of the quarters ending on the last day of March, June, September and December Such quarterly returns are also to be furnished within thirty-one days from the close of the quarter to which it relates, i e , return for the quarter ending at March must be furnished within 1st May, for the quarter ending at June must be furnished within 31st July and so on These returns have also to be certified by a principal officer of the insurer

Prohibition of loans

29 (1) No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm, to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner

Provided that nothing contained in this sub-section shall apply to loans made by an insurer to a banking company

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the Controller,

(2) The provisions of section 86D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy

(3) Subject to the provisions of sub-section (1), no insurer carrying on life insurance business shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise

except such loans as are specified in sub-section (1) of section 27A ,

(b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—

(i) in the case of a chief agent, the overriding renewal commission earned by him during the year immediately preceding,

(ii) in the case of a special agent, the renewal commission earned by him during the year immediately preceding,

(iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding

Explanation —The temporary advance referred to in clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

(a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and

(b) shall not exceed, in the case of the special agent, five hundred rupees, and, in the case of the insurance agent, one hundred rupees,

and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950, which contravenes the provisions of sub-section (3) shall be notified by the insurer to the Controller within thirty days of such commencement and shall notwithstanding any contract to the contrary be repaid within one year from such commencement

(5) Where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event

(6) In case of default in complying with the provisions of sub-section (4) or sub section (5), the director, manager, auditor, actuary, officer or partner, or the chief, special or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of the said period of one year, or three months, as the case may be.

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Loans and advances in any form, prohibited, sub-section* (1)
(i) *Director*
(ii) *Manager*
(iii) *Managing agent*
(iv) *Actuary*
(v) *Auditor*
(vi) *Officer*
4 *Loans to whom not prohibited, provisos 1 and 2 to sub-section* (1)
5 *Loans to a director of company on life policy, non applicability of the Companies Act, 1956, sub-section* (2)
6 *Other loans prohibited subject to certain exceptions, sub-section* (3)
7 *Loans or advances existing, their repayment, sub-sections* (4) *and* (5)
8 *Liability of the director, officer, and agents in case of default, sub-section* (6)

1 Legislative changes —(*a*) Sub-section (1) has been re-numbered as sub-section (1) of that section by section 19 of Act XIII of 1941

(*b*) The words "nothing contained in this sub-section" occurring in the first proviso to sub-section (1) were substituted by Act XLVII of 1950

(*c*) The second proviso to sub section (1) was omitted by Act XLVII of 1950

(*d*) The third proviso which is now the second proviso to sub section (1) was added by Act XLVII of 1950

(*e*) Sub-section (2) was added by Act XIII of 1941

(*f*) Sub sections (3), (4), (5) and (6) were added by Act XLVII of 1950

2 Object and scope —The object of this section is to prohibit an insurer from granting loans or temporary advances to the persons who are entrusted with his affairs in some way or other Thus where the insurer is a company, such loans are prohibited from being given to its directors manager, managing agent or any of its officer, where the insurer is a firm any partner is not entitled to take any loan out of the fund of the insurance business An actuary and an auditor also come within this prohibition But exceptions to this general rule of prohibition have also been provided in the section itself Thus, loans to those persons can be granted if they have life policies with the insurer but they must be within their surrender value So also loan to a banking company or to a subsidiary company or to any other company of which the company granting the loan is a subsidiary company are not prohibited Even temporary advances to chief, special or insurance agents otherwise than permitted under sub-section (3) of this section have been prohibited Provisions have also been made for repayment of any loan or advance existing at the date of commencement of the Insurance (Amendment) Act, 1950, *i e* 1st June, 1950 The effect of not repaying the said loans or advances within the time prescribed has also been provided for The provisions of this section are mandatory

Provisions in *statutes* forbidding officers of the company to borrow its funds have been sometimes construed to be merely directory,[1] and under such provisions, where an officer borrows funds and fraudulently pledges negotiable bonds held by him in trust for a third person, the company acquires title to the securities, if it acts in good faith and without notice of the fraud the result not being changed by the fact that the loan is in violation of a rule of the directors.[2] When the effect of loans to stock-holders is to reduce the company's capital below the amount prescribed by law such loans are invalid.[3] Where the amount of the loan is restricted to a certain percentage of the value of the security offered, a loan in excess of the prescribed percentage, although forbidden, is not entirely invalid, but is valid and properly counted as assets in so far as it does not exceed the prescribed percentage, and furthermore, the borrower cannot invoke the statute for the purpose of precluding the company from enforcing its security.[4] But where the making of loans is regulated by statute and the statute prescribes kinds or classes of securities which funds may be lent, the company has no power to make loans on any other security.[5]

3 Loans and advances in any form prohibited, sub-section (1) Sub section (1) of this section speaks in mandatory language that no ... should grant any loan or even any temporary advance to any (*a*) director (*b*) manager, (*c*) managing agent, (*d*) actuary, (*e*) auditor, or (*f*) officer if the insurer is a company, or (*g*) partner of the firm, if the insurer is a partnership firm, or (*h*) other company or firm, in which any such director, manager managing agent, actuary, officer or partner holds the position of a director manager, managing agent, actuary, officer or partner Even such loan or temporary advances are prohibited on hypothecation of property or on personal security or otherwise. This section prohibits loans or temporary advances in unequivocal language whether such loans or advances are secured or unsecured / But the loans which have not been prohibited to those officials are loans on life policies issued by the insurer and such loans must not exceed the amount of the surrender values of those policies

(*i*) *Director* —The word 'director' has been defined in the Companies Act, 1956 to include any person occupying the position of director, by whatever name called.[6] To determine whether a person is a director or not the criterion is not that he is merely called by that name but the criterion is whether he occupies the position of a director, functions and discharges his duties as such Thus the members of the Executive Committee or the Governing Body of any association or body registered under section 20 of the Companies Act 1956, are directors Even a limited company may itself be a director of another company.[7] In the eyes of law a person is called a director when he has been duly appointed and has not ceased to be a director by having become disqualified after his appointment Such a person is *de jure* a director But section 290 of the Companies Act, 1956, provides that acts done by a person as director shall be valid, notwithstanding that it may afterwards be

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1 *Bazeditch v New England Mutual Life Insurance Co*, 141 Massachusetts 292

2 *Ibid*

3 *American Life Insurance Co v Ferguson* 134 Pac. Rep. 1029

4 *Washington Life Insurance Co v Clason*, 3 New York 305 *see also Union Pac Life Insurance Co v Ferguson*, 129 Pa 529

5 *Smith v Alabama Life Insurance & Trust Co* 4 Ala 558

6 *See* S 2 (13) of the said Act and S. 455 of the English Act

7 *Re Bulawayo Market, etc Co.*, (1907) 2 Ch 458

discovered that his appointment was invalid by reason of any defect or disqualification Such a director may be a director *de facto* [1] Acts of *de facto* directors are effective both *vis-a vis* outsiders and *vis-a-vis* members [2] A *de facto* director is as much in a fiduciary position as a *de jure* director, and liable accordingly [3]

(ii) *Manager* —*See* Note 10 under section 2, *supra*

(iii) *Managing agent* —*See* Note 9 under section 2, *supra*

(iv) *Actuary* —*See* Note 9 under section 2, *supra*

(v) *Auditor* —*See* Note 5 under section 2, *supra*

(vi) *Officer* — *See* Note 11 under section 2, *supra* and see *Suryanarayana* v *Vijaya Commercial Bank, Ltd* [4] where it has been observed that the term "officer" is a term of wide connotation and may also include assistant secretaries, branch managers, etc

4 Loans to whom not prohibited, provisos 1 and 2 to sub-section (1) —The provisos 1 and 2 of sub-section (1) make exceptions to the general rule of prohibition of loans and advances enunciated under *sub section (1)* and hence the provisos permit the loans to be given to certain companies The insurer can grant loans or temporary advances either on security or otherwise to the following companies

(i) a banking company,

(ii) a subsidiary company, and

(iii) any other company of which the company granting the loan or advance is a subsidiary company

But when such loans or advances are given out of any life insurance fund the insurer is under obligation to report to the Controller of such loans or advances being given out of such fund within thirty days of the making of such loans or advances

Provisions contained in sub-section (1) of this section are similar to the provisions made in section 33 of the Canadian Insurance Companies Act wherein loans to a director of the company or its officer or to the wife or child of any such director or officer are prohibited but a company authorised to transact life insurance may lend to any of its directors or officers on the security of the company's own policies

5 Loans to a director of company on a life policy, non-applicability of the Companies Act, 1956, sub-section (2) —Sub-section (2) of this section provides that the provisions contained in section 295 of the Companies Act, 1956,[5] shall not apply to a loan granted to a director of an insurance company when such loan is granted on the security of a policy issued to him on his own life by the insurance company itself But such loan must be within the surrender value of such policy Section 295 of the Companies Act has prohibited loans either directly or indirectly to any director or his relative in any form without obtaining the previous approval of the Central Government on that behalf To obviate the difficulty that may cause in granting

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1 *See* Jenkins's case (1877) 7 Ch D 132 *Morris* v *Kanssen* (1946) A C 459 (1946) 1 All L R 586 *Albert Judah* v *Ramapada Gupta* 1949 Cal 715 for a similar provision *see* S 180 of the English Act

2 *Mahony* v *East Holyford Mining Co* (1875) L R 7 H L 869 *see* also observations of Lindley J in *British Asbestos Co , Ltd* v *Boyd* (1903) 2 Ch 439

3 Coventry's case (1880) 14 Ch D 660

4 (1958) 2 Andh W R 331 : 1958 756

5 S 86D of the Act of 1913

loans to a director of the insurance company the provisions in sub-section (7) of this section have been made Moreover, by enacting those provisions the discrimination between an ordinary policy-holder and a director policy holder which would have otherwise been made has been done with

6 **Other loans prohibited subject to certain exceptions, sub-section (3)** —The granting of any loans or temporary advances either on hypothecation of property or on personal security or otherwise not only to a director or a partner, as the case may be, or any officers of the insurer but also to others have, generally, been prohibited under sub-section (3) of this section Even temporary advances to any insurance agents, whether they are chief, special or ordinary agents, with a view to facilitate the carrying out of their functions as such agents have also been prohibited under this sub-section But certain exceptions to this general rule have also been provided therein These exceptions are as follows

(*a*) loans as are specified in sub-section (1) of section 27A, *i e*, an insurer is permitted to advance loans on first mortgages on immovable property as provided in clause (*e*) or clause (*m*) or clause (*n*) of sub-section (1) of section 27A , and

(*b*) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such advances do not exceed in the aggregate,

(*i*) the overriding renewal commission earned by him during the year immediately preceding, when he is a chief agent, and

(*ii*) the renewal commission earned by him during the year immediately preceding, when he is a special agent or an insurance agent

But provisions for granting temporary advances to special agent or insurance agent who is newly appointed and has not earned any renewal commission have also been made on conditions as follows

(*i*) that such advances shall not exceed five hundred rupees in case of a special agent and one hundred rupees in case of an insurance agent, and (*ii*) that such advances are repaid within two years from the date on which the special agent or the insurance agent, as the case may be, was first appointed

But in granting such advances it must be seen that the total amount of all such advances to different agents must not exceed Rs 10,000 in the case of any insurer whose business in force is one crore of rupees or more and Rs 5,000 in any other case This is what the *explanation* to sub-section (3) provides The explanation being one to clause (*b*) of sub-section (3) advances spoken of in clause (*b*) thereof should be read along with this *explanation* and the total limit of Rs 10 000 and Rs 5,000 of such advances to agents should not be read as limiting the total amount to newly appointed agents but as limits the total amount advanced to all agents spoken of in clause (*b*) of this sub-section

7 **Loans or advances existing, their repayment, sub-sections (4) and (5)** —Sub-section (4) of this section provides for the repayment of any loans or advances existing at the commencement of the Insurance (Amendment) Act 1950 *i e* 1st July 1950 This sub-section provides that when any loans or advances exist as at 1st July 1950 in excess of what is provided in sub-section (3) the insurer must notify those loans and advances to the Controller

within thirty days from 1st July, 1950, and those loans and advances have to be repaid within one year from the said date, even if there was any contract to the contrary This sub-section saves the insurer from being liable for any damages in breach of any contract existing between him and the borrower

Sub-section (5) of this section provides, on the other hand, for a contingency which makes any subsisting loan or advance as contravening the provisions of this section On the occurring of such a contingency the borrower has been given the time of a period of three months to repay the said loan or advance from the date of occurrence of such event Thus, when a loan or advance is given to a director or any officer other than on his life policy which is in contravention of sub-section (1) of this section, such director or officer can repay the said loan or advance within three months from the date when such loan or advance contravenes the provisions of this section Similarly, where loans or advances are made to the agents in excess of what they would have received as permissible under sub-section (3), such loans or advances become repayable to the insurer within three months from the date when such advances would contravene the provisions of that sub-section Likewise, where loans or advances have been made on hypothecation of property or personal security or otherwise except those permitted under sub-section (1) of section 27A, such loans or advances are also repayable within three months from the date when such loans or advances would contravene the provisions of this section

In short, these provisions have been made with a view to save those loans and advances from being declared illegal outright from the date when they contravene the provisions of this section, but that certain time is allowed for their repayment and beyond which they would be treated as illegal [1]

8 **Liability of the director, officer and agents in case of default, sub-section (6)** —If default is made in complying with the provisions of sub-section (4) or sub section (5) of this section, sub-section (6) will come into play. This sub section speaks in mandatory language of the consequences of default in repaying the loans or advances within the periods allowed in sub-section (4), or sub-section (5), that is, within one year or three months, as the case may be, from the date when such loans or advances would contravene the provisions of this section Besides other penalties to which a defaulter might be amenable under the Act, such defaulter, whether he is a director, manager, auditor, actuary, officer or partner or whether he is a chief, special or insurance agent, must cease to hold office under the insurer or to act for him granting the loan on the expiry of the said period of one year or three months as the case may be

Liability of director etc for loss due to contraventions of sections 27 27A and 29

30 If by reason of a contravention of any of the provisions of section 27, section 27A or section 29, any loss is sustained by the insurer or by the policy-holders, every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount of such loss

SYNOPSIS

1 *Legislative changes*
2 *Scope and object*
3 *Applicability*
4 *"Who is knowingly a party"*
5 *"Without prejudice to any other penalty"*
6. *"Jointly and severally liable"*

[1] See s. 30 (6) (c), supra

1 Legislative changes —The words and figures "section 27A" occurring in the section were inserted by Act XLVII of 1950

2 Scope and object —The object of this section is to make the director or any officer knowingly a party to contravening the provisions as to investments of assets, or investments of the controlled fund, or granting of loans as provided respectively in sections 27, 27A and 29 of this Act, liable to make good the amount of loss sustained by the insurer or the policy holders by reason of the aforesaid contraventions, that is, if a director invests the assets otherwise than in terms of section 27 or the controlled fund otherwise than as provided in section 27A or grants loan otherwise than in accordance with section 29 and on account of these the insurer or the policy holders sustain loss, the director will be bound to reimburse the loss if he be knowingly a party to these transactions being entered into in contravention of those sections The liability of the director or the officer concerned to make good the loss as provided in this section is without prejudice to any other penalty to which he may be liable under this Act

3 Applicability —For the applicability of the provisions of this section, there must be loss sustained by the insurer or by the policy holders If there be no loss either to the insurer or to the policy-holders due to the contraventions of any of the provisions of section 27, or section 27A or section 29, the provisions of this section are not attracted because neither the director nor any officer can be called upon to make good any loss which has never occurred or sustained Further, for the applicability of this section the insurer or the policy-holders must prove that the director or the officer or the partner concerned was knowingly a party to the contraventions of any of those sections and for which the loss complained of was sustained by him or them Hence for the applicability of this section there must be two elements present, *i.e.* (*i*) loss sustained by the insurer or the policy-holders, and (*ii*) the person concerned must be knowingly a party to the contraventions

4 "Who is knowingly a party"—A person becomes 'knowingly a party' when he knows by virtue of the position he holds, either as director, or manager, managing agent, officer or partner that by investing the assets otherwise than under section 27 or by investing the controlled fund otherwise than under section 27A, or by granting the loans or advances otherwise than under section 29 he would be contravening those provisions of the Act. His 'knowledge' under this context should mean the state of mind entertained by a person with regard to existing facts which he has himself observed or the existence of which has been communicated to him by persons whose veracity he has no reason to doubt His 'wilful negligence' may also come within its fold as the phrase 'wilful negligence' means that the officer in question is conscious of acting or failing to act in a reprehensible manner But such an officer will be excused if through mere inadvertence or error of judgment and while endeavouring honestly to carry out his duty, he does or omits to do something which apart from these words (knowingly a party) might have rendered him liable A director of a company may be ignorant but if his ignorance arises from his wilfully shutting his eyes to the facts, which are before him, he is equally guilty A loss is said to be due to a person who is knowingly a party when such knowledge is either the sole effective cause of the loss or is so connected with it as to be naturally contributing to it [1]

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1 *See Govindaswamy v Ranganath* 54 Bom 226 32 Bom L R 232 1930 Bom 572; *Ardeshir Dinshaji Tumbi v Agent G I P Rly* 55 I A 67 32 C W N 511; *Premchand Ramkumar v P G* 21; *Hudson v Official Liquidator* 51 A I J 500 1929 All 826

5 **"Without prejudice to any other penalty"**—The words 'without prejudice' imported in this section mean that making good the loss by the director or the officer concerned shall not of itself absolve the director or the officer from being liable to other penalty provided under this Act but he will be liable to other penalty as if the loss had not been made good. Thus section 102 of the Act, *inter alia*, provides that where any director, managing agent or other officer or any partner who is knowingly a party to the default or contravention shall be punishable with fine which may extend to one thousand rupees and in case of continuing default or contravention with an additional fine which may extend to five hundred rupees for every day during which the default or contravention continues [1]

Moreover, by importing the phrase "without prejudice" the making good the loss will not operate as estoppel in imposing the other penalty provided under the Act Although there cannot be an estoppel against a statute yet the Legislature in their wisdom having imported the words "without prejudice" had set at rest that other penalties for contraventions can be imposed [2]

6 **"Jointly and severally liable"**—The obligations imposed upon the director or officer when contravening the provisions of the Act mentioned in this section are 'joint and several' at the same time and not 'joint' or 'several' When an obligation is joint and several, it contains distinct engagements, that of each obligor individually and that of all jointly and different remedies may be pursued upon each The obligors may be sued separately on their several engagements or together on their joint undertaking [3]

Assets of insurer how to be kept

31 (1) None of the assets in India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7 or section 98 or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than in the name of a public officer approved by the Central Government, or in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual

(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realisation of interest, bonus or dividend.

SYNOPSIS

1 *Legislative changes*
2. *Object and scope*
3 *Applicability*
4 *In whose name the assets are to be kept, sub-section (1)*
5 *—(A) Exceptions provided in the sub section*
"Endorsement in favour of a banking company" sub-section (2)
6 *Analogous law under other Acts*

1 *See* Note under S 102 *post*
2 See *Umesh Jha v State*, 35 Pat 383 1956 Pat 425
3 See *Mason v Eldred*, (1868) 18 Law Ed 783, *Kendell v Hamilton* (1819) 4 App Cas 504 *see* S 25 Indian Partnership Act IX of 1932 Ss 42 and 43 Indian Contract Act IX of 1872.

1 **Legislative changes**—(*a*) Section 31 was re-numbered as sub-section (1) and sub-section (2) by Act VI of 1946 and again substituted by Act XLVII of 1950

(*b*) The word "India" occurring in sub-section (1) was substituted by Act LXII of 1956

(*c*) The words and figures "or section 93" and "in the name of a public officer approved by the Central Government, or" occurring in sub-section (1) were substituted by Act XXV of 1942

2 **Object and scope**—The object of this section is to prohibit the insurer in keeping his assets in India invested in the name of any individual of his choice but that such assets have to be kept invested in the name of the insurer himself when he is an individual and proprietor, in his corporate name when he is a company or in the name of the partners, when he is a firm. Only such assets may be permitted to be kept invested in the name of a public officer when the Central Government approves such name

The scope of this section extends to all assets of the insurer in India except those deposited with the Reserve Bank of India under section 7 or section 98 of this Act and those which are required to be vested in trustees by sub-section (6) of section 27 The provisions of this section, in other words would reduce the temptation of the director or officer of any insurer to misuse the investments if they were allowed to be invested in the name or names other than that of the insurer as stated above

3 **Applicability**—The provisions of this section are applicable to all insurers, whether Indians or non-Indians, whether such insurers are corporate bodies, or partnership firms or individuals

4 **In whose name the assets are to be kept, sub section (1)**—The assets of an undertaking of an insurance business must be kept (*a*) in the name of a public officer approved by the Central Government, or (*b*) in the corporate name of the undertaking (*i*) if such undertaking is a company, or (*ii*) in the name of the partners (*ii*) if the undertaking is a firm, or (*d*) in the name of the proprietor (*iii*) if the undertaking is an individual.

(*A*) *Exceptions provided in the sub-section*—But exceptions to the aforesaid general rule have been made in the *following cases*

(*i*) assets deposited with the Reserve Bank of India under section 7 or section 98 of the Act, and[1]

(*ii*) assets required to be vested in trustees by sub-section (6) of section 27[2]

With regard to the assets aforementioned they are to be kept in the names as provided in those sections and not in the name of the undertaking as provided in this section 4

5 **"Endorsement in favour of a banking company," sub section (2)**—Sub-section (2) of this section permits the endorsement of any security or other document in favour of a banking company solely for the purpose of collection or for realisation of interest bonus or dividend These provisions make easy collection of interest bonus or dividends as and when they accrue due

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1 *See* Notes under s 7 and S 27 *supra*

2 *See* Note 3 (third (*c*) of S 7 and Note 9 of S 27, *supra*; note that a misprint on (*d*) of S 27 occurring in the section as obvious mistake it should be read as section (*f*) of S 27

An indorsement for collection merely makes the indorsee the indorser's agent to collect the sum due An indorsement for collection "for my use" and the like is not an actual transfer of the amount and may be recalled at pleasure and is cancelled by the payee's subsequent indorsement to another indorsee for value Hence an indorsee for collection cannot transfer the ownership to another who has notice of the limited title and such notice is apparent in cases of restrictive indorsements [1] He is bound to deal with the instrument as directed and may be compelled to deliver it up to the indorser [2] An indorsee for collection does not get any property in the bill and cannot hold the acceptor liable where the drawer paid the amount of the bill before maturity to the indorser and released the acceptor, although such indorsee has paid the amount to the indorser [3]

6 **Analogous law under other Acts** —A similar provision is to be found in the Canadian Act where it has been provided that all investments and deposits of the funds of any company shall be made in its corporate name and no director or other officer thereof, and no member of a committee having any authority in the investment or disposition of its funds shall accept or be the beneficiary of, either directly or indirectly, any fee, brokerage, commission, gift or other considerations for or on account of any loan, deposit purchase, sale, payment, etc (*see* section 63 of the said Act) Section 49 of the Companies Act, 1956, also *inter alia* provides that all investments, except those provided in that section, made by a company on its own behalf shall be made and held by it in its own name But for the facility of collection of any dividend or interest the company may deposit any shares or securities with a bank being the bankers of company and for the facility of transfer thereof may also transfer to or hold in the name of the State Bank of India or a Scheduled Bank being the bankers of the company such shares and securities otherwise than in its own name,

Provisions relating to managers, etc

31A (1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after the expiry of one year from the commencement of the Insurance (Amendment) Act, 1950—

(*a*) be managed by a company or a firm, or

(*b*) be directed or managed by, or employ as manager, or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or

(*c*) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer

1 *Dawson* v *Isle* (1906) 1 Ch 633 *Mottyled* v *Dent* 5 M I A 328 also *Stone* v *Bull* 2 C I M v *The United States* 3 W *Lloyd* v *Howard*, 15 Q B 995

2 *Rejrootpram* v *Puddoo* 1 Hyde 155

3 *Dixon Co* v *Shallibot*, 1 T L R 417 , see

Provided that nothing in this sub-section shall be deemed to prohibit—

(i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him ,

(ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him ,

(iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st day of November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him ,

(iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him ,

(v) the employment as an officer of any individual who receives renewal commission in respect of insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later ;

(vi) the payment of a share in the profits of general insurance business ,

(vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case ".

2 Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned

the management of an insurer's business shall be entitled to nominate a successor to his office, and no person so nominated, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be entitled to hold or continue in such office

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary, contained in the said provision or in section 86B of the Indian Companies Act, 1913, be void

(4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *"Notwithstanding anything to the contrary contained, etc," sub-section (1)*
5 *"No insurer shall", etc, sub-section (1)*
—(A) *Commission*
—(B) *Bonus*
6 *Commission, bonus or share in the profit, permissibility of, sub-section (1)*
7 *Nomination of a successor to office, not permitted, sub-section (2)*
8 *Assignment of office by a director, manager or other officer, permissibility of, sub-section (3)*
9 *Compensation for any loss, sub-section (4)*

1 Legislative changes—Section 31A was inserted by Act XLVII of 1950

2 Object and scope—The object of this section is to control the expenses of management paid by an insurer by appointing managers or other officers whose remuneration, either wholly or in part, takes the form of commission, bonus or a share in the valuation surplus in respect of the life insurance business or commission or bonus in respect of the general insurance business Another object is to prohibit the employment of any company or firm to manage the insurance business of the insurer It also prohibits nomination of a successor or assignment of office by a manager, managing director and other officer

The provisions of this section with regard to the articles of association of an insurance company or with regard to any contract or agreement in case of any insurer whereby appointment of manager or any officer was made on the basis of commission or bonus or on the basis of a share in the valuation surplus or the employment of any company or firm to manage the business of the insurer were to come into full force after the expiry of one year from the commencement of the Insurance (Amendment) Act 1950, *i e*, the restricting such appointments were to come into full force on and July, 1951 After said date any manager or officer holding any insurer otherwise than on salary basis shall cease to hold or

in such office So also where the business of the insurer was being managed by any company or firm, such management would also automatically cease on and from 1st July, 1951 But with regard to the nomination of a successor in office or any assignment of office by a director or manager or other officer of the company to any other person shall not be effective after the commencement of the said Amendment Act The office of the nominated person or of the assignee shall be void after 1st July, 1951 Even any such person shall not be entitled to any compensation for the loss of his office by virtue of the provisions of this section

3 **Applicability** —The provisions of this section are applicable to all insurers whether they be incorporated bodies or firms or individuals and irrespective of whether they carry on life insurance business or any other class of insurance business

4 **"Notwithstanding anything to the contrary contained", etc , sub-section (1)** —The expression 'notwithstanding anything' to the contrary contained' in the Indian Companies Act or in the articles of association of the insurance company or in any contract or agreement, means that even though there may be provisions in the said Act or in the articles of association or there be subsisting contract or agreement valid under the Indian Contract Act, the provisions made in sub-section (1) of this section will prevail and the latter provisions will nullify the provisions of the Companies Act, and the articles of association and will make the contract or agreement otherwise valid invalid in law Thus, if there be any provision in the Companies Act or in the articles of association of the insurance company that the insurance business of the insurer could be managed by a company or by a firm, such provisions would have no legal force nor validity after the expiry of one year from the commencement of the Insurance (Amendment) Act of 1950 So also if any manager or officer was appointed under any contract or agreement on a remuneration which would take the form of commission or bonus or share in the valuation surplus, such contract or agreement would become invalid after the expiry of one year from the date of the commencement of the said Amendment Act

5 **"No insurer shall", etc , sub section (1)** —The expression 'shall' normally connotes undoubtedly a mandate on the part of the Legislature and also connotes an obligation upon the person or authority to whom the mandate is issued In order to place a proper construction on that expression the Court must look to the scheme of the Act in order to determine what are the consequences which the law has laid down as a result of non-compliance with that mandatory direction The consequence may be penal, the consequence may be that a particular order passed is invalidated, the consequence may be that a particular right is not acquired or a particular obligation is imposed, or the consequence may not be stated in the law at all When no consequence is apparent in the law, it is possible for the Court to take the view that although the Legislature has used the expression 'shall', it must be construed as being directory or procedural rather than mandatory in the strict sense of the term Ordinarily, though the word 'shall is mandatory, it can be interpreted as directory if the context and intention otherwise demand No general rule can be laid down for deciding whether any particular provision in a

1 *State of Bombay v Morarji Cowasji* I L R (1959) Bom 990 61 Bom L R 318 *see also Major Jogindar Singh v Bibi Raj Mohinder Kaur*, I L R (1960) Punj 222 : 1960 Punj 219 *Bijay Cotton Mills Ltd v State of Rajasthan* I L R (1959) 9 Raj 1012

2 *Messrs Satish Motors v State of Rajasthan* 1961 S C 1480

statute is mandatory or only directory [1] For ascertaining the real intention, the Court may consider, *inter alia* the nature and design of the statute, and the consequences which would follow from construing it one way or the other and above all, whether the object of the legislation will be defeated or furthered [2]

Judging from the tests laid down as above, it may be said that the word 'shall' used in this section should be construed as a mandate to the insurer The mandates under this sub section are that after the expiry of one year from the commencement of the Insurance (Amendment) Act,

(i) he will not permit his undertaking to be managed by a company or a firm, or

(ii) he will not permit his undertaking of life insurance business to be directed or managed, or

(iii) he will not employ as manager or officer or in any capacity any person whose remuneration or any part thereof would consist of commission or bonus or a share in the valuation surplus, or

(iv) he will not permit his undertaking of general insurance business to be directed or managed by, or

(v) he will not employ as manager or officer or in any capacity any person whose remuneration or any part of it would also consist of commission or bonus

(*A*) *Commission* —Ordinarily the word 'commission' means remuneration payable on percentage basis on the amount involved Such commission is generally payable to agents for their introducing business to the principals The Companies Act, 1956, provides for the total managerial remuneration payable by a public company or private company which is a subsidiary of a public company on a commission basis Such remuneration must not exceed 11 per cent of the net profits of a company for any financial year [3] (section 198) Similarly, a director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other But except with the approval of the Central Government such remuneration must not exceed 5 per cent of the net profits for one such director or 10 per cent for all of them together if there is more than one such director [3] Besides the Companies Act also permits a company to pay a commission to any person in consideration of (*a*) his subscribing or agreeing to subscribe for any shares or debentures of the company, or (*b*) his procuring or agreeing to procure subscriptions for any shares or debentures of the company, provided the payment of such commission is authorised by the articles and percentage of commission does not exceed 5 per cent of the price in the case of shares and 2½ per cent of the price in case of debentures [4]

Under this section payment of commission by way of remuneration or partly by one way and partly by the other has been prohibited to any director, manager, officer or any person in any capacity except to a chief agent, special agent or an insurance agent in respect of life insurance business and to a

1 *Banwarilal Agarwalla* v *State of Bihar* 1961 S C. 849

2 *State of Uttar Pradesh* v *Babu Ram Upadhya* (1961) 1 S C A 593 1961 S C 751

3 S 309, Companies Act

4 S 76 Companies Act 1956 *see* also *Madanlal Fakir Chand Dudhediya* v *Changdeo Sugar Mills, Ltd* I L R (1958) Bom 76 60 Bom L R 254 1958 Bom

principal agent or an insurance agent in respect of general insurance business or to an individual in a clerical or other subordinate capacity who also procures business as an insurance agent [1]

(*B*) *Bonus* —Bonus in the industrial sense as understood in our country come out of the available surplus of profits and when paid, it fills the gap wholly or in part, between the living wage and the actual wage It is an addition to the wage in that sense, whether it be called contingent or supplementary Nonetheless, it is labour's share in the profits and hence it is a remuneration which takes the form of a share in profits [2]

6 Commission, bonus or share in the profit, permissibility of. Proviso, sub-section (1) —Remuneration by way of commission is permitted in case of life insurance business, to be paid to a chief agent, special agent or an insurance agent for business either procured by him or through him In case of general insurance business to a principal agent or an insurance agent for business either procured by or through him Remuneration by way of commission is also permitted to be paid to a person who must not be an officer of the insurer but who was employing chief or special agents on 1st November, 1944, in respect of insurance business and continues so to do But payment of commission to such a person must be made with the approval of the Central Government and for the period as would be determined by it.

Again an employment of an insurance agent in the clerical or other subordinate capacity is permitted In such a case his remuneration would be partly by salary and partly by commission; because as an insurance agent procuring insurance business he will receive his commission for the business procured and as a clerk he will receive his salary Similarly, an employment of any individual receiving renewal commission in respect of life insurance business, as an officer, is permitted So also a person who was an employer of agents could be appointed as an officer but before employing such a person it must be seen that before such employment or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later, he was an employer of insurance agents

Bonus in any year is also permitted to be paid to all salaried employees or to any class of them but its payment must be on a uniform basis and should be paid by way of additional remuneration and its amount must not exceed in amount the equivalent of his salary receiving same and the period of months up to which such bonus could be added would lie with the discretion of the Central Government It will determine such period as would be reasonable having regard to the circumstances of each case Thus, bonus may vary from insurer to insurer

Clause (*vi*) of proviso to sub-section (1) also permits the payment of a share in the profit of general insurance business But such payment of share in the profit of life insurance business is not permitted

7 Nomination of a successor to office not permitted, sub-section (2) —Sub-section (2) of this section prohibits nomination of a successor to an office by manager, managing director or any other person concerned in the management of an insurer's business Even when such a person is nominated by a

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1 *See* post Note

2 *Central Bank of India* v *Their Workmen*, (1960) 1 S C R 200 : (1960) 1 S C A 454 : 1960 S C J 142 : (1959) 20 Com Cas 367 : 1960 S C 12 *see also Burrush Steel Pipes Mills Ltd* v *Their Workmen* (1961) 1 S C J 577 : 1961 S C 917 (Five bonus to clerical staff) *Bombay Gas Co Ltd* v *Workmen* (1961) S C 1165 : 1 *Indo Iron Its Workmen* (1961) 1 S C J 72 *Sugar* S C 941 *Pratap Press* v *Press* 1960 S C 1213

of them irrespective of whether such nomination was made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether such nomination is in terms of any contract or agreement or is in pursuance of any provisions of the Indian Companies Act, 1913, or of any provisions in the articles of association, his nomination will be null and void and he must be precluded from holding or continuing in such office

The Companies Act, 1956, does not make any provision for nomination of a successor to office by manager or managing director except the nomination of two directors by the managing agents to the Board of Directors when their total number exceeds five and one only when the total number does not exceed five [1] But certain private companies provide in their articles of association that the business shall be managed by 'governing directors' or a sole 'governing director' or by 'permanent directors' or "life directors" Such articles also provide that in the absence of the 'life director' or 'permanent director' person or persons nominated by him should be the 'permanent' or life' director [2]

8 **Assignment of office by a director, manager or other officer, permissibility of, sub-section (3).**—Sub-section (3) of this section prohibits assignment of office by a director or manager or other officer of a company to any other person even if such assignment could be permitted under the articles of association of the company or even if there exists any subsisting agreement to that effect, and even when such assignment of office is made pursuant to the articles of association or in terms of the agreement

Section 312 of the Companies Act, 1956, provides that any assignment of his office made after the commencement of that Act by any director of a company shall be void The Supreme Court in recent case has observed that the word 'assignment' does not mean or include 'appointment' An 'appointment' has nothing to do with anything passing from one to another, it connotes the putting of someone in a vacancy The acts constituting a transfer and an appointment are therefore wholly dissimilar [3]

Similarly, section 343 of the Companies Act, 1956, provides that the managing agent of a company shall not transfer his office to another person or enter into any agreement or arrangement with another person by or under which the managing agent parts with, or which has the effect of transferring his right to manage the whole or substantially the whole of the affairs of the company in favour of or to that other person unless approval of the company in general meeting and also of the Central Government has been accorded to such transfer, agreement or arrangement Under the said Act the managing agency has been made not to be heritable except where such agency is held by an individual [4] So also under the said Act arrangement of his office by manager has also been prohibited [5]

9 **Compensation for and loss, sub section (4)** —Sub-section (4) o this section saves the insurer from paying any compensation to any person for loss of his office or his remuneration by virtue of the operation of the provisions of this section Section 318 of the Companies Act, 1956, prohibits payment of compensation for loss of office to anyone except to managing

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1 *See* S 377 of the Companies Act 1956

2. *See* Palmer s Company Precedents 17th Ed p 744 Form No 26>

3 *Oriental Metal Pressing Works (P) Ltd* v *Bhaskar Kasinath Thakoor* (1961) 2 S C A 368 1961 S C 573 (1961) 31 Com Cas 143, in the same case it was held that where a managing director of company in exercise of his powers under the articles appointed by his will one *G* as the managing director to hold the office after his death the exercise of the power was legal and did not offend S 312 of the Act

4 *See* Ss 344 and 345 of the said Act

5. *See* S 388 of the Act

or whole time directors or to directors who are managers[1] But commission is payable to a managing agent (*i*) where he loses his office on the reconstruction or amalgamation of his managed company and he is not appointed in the reconstituted or amalgamated company, (*ii*) where he vacates office on the winding up of the company not due to his own default or negligence, or (*iii*) where his office is terminated for any reason, such as, where the company becomes a Government company[2]

Power to restrict payment of excessive remuneration

31B (1) The Central Government may if it is satisfied that any insurer, in the case of an insurer specified in sub clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person remuneration, whether by way of commission or otherwise, on a scale disproportionate according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Central Government in this behalf

(2) Every insurer shall, before the close of the month following every year, submit to the Controller a statement in the prescribed form showing the remuneration paid, whether by way of commission or otherwise, to any person in cases where such remuneration exceeds the sum of five thousand rupees in that year

(3) Where any person not being a chief agent, principal agent or special agent is in receipt of remuneration exceeding the sum of five thousand rupees in any year, the Controller may, by notice in writing, require the insurer to submit certified copies of the agreement entered into between the insurer and any such person and the insurer shall comply with any such requisition within the time specified in the notice

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Power of the Central Government, sub-section* (1)
5 *Submission of return, insurer's duty sub-section* (2)
6 *Power of the Controller, sub-sec* (3)

1 *See also* Ss. 319 and 320 of the said Act

2 S. 365 Companies Act 1956 *see also* 366 and 367 of the said Act,

1 **Legislative changes**—Section 31B was inserted by Act XLVII of 1950

2 **Object and scope**—The object of this section is to check payment of excessive remuneration to any person in the employment of the insurer made whether by way of commission or otherwise The scale of pay must not be disproportionate to the resources of the insurer and should be according to the normal standards prevailing in insurance business In case of such disproportionate payment, the Central Government has been empowered to call upon the insurer to comply with its directions in this regard specially in the matter of scaling down such remuneration even by alteration of the terms of any existing contract and the person who is affected by such alteration would not be entitled to claim any compensation for the breach of the terms of contract

Where any remuneration paid by an insurer to any person in any year exceeds the sum of five thousand rupees whether by commission or otherwise, it is obligatory upon him to submit to the Controller a statement in the prescribed form showing the remuneration paid In case of remuneration payable to an insurance agent the Controller has been given the power to require the insurer to submit to him certified copies of agreement between such agent and the insurer when the remuneration payable to such insurance agent exceeds five thousand rupees in any year Even when a person resigns because of the alteration of the terms of the contract he would continue to get the renewal commission due to him but the rate of such commission should be approved by the Central Government

3 **Applicability**—The provisions of this section are applicable to (*i*) insurers specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2, *i e*, insurers having their or its principal places of business or are domiciled in India and any body corporate incorporated under the Companies Act, 1956, carrying on the business of insurance To these classes of insurers, the provisions of this section are applicable to all insurance business transacted by them, and (*ii*) any other insurer, *i e*, other insurers not being insurers mentioned in (*i*) above, the provisions of this section are applicable to the insurance business transacted by them in India

4 **Powers of the Central Government, sub section (1)**—Sub-section (1) of this section confers discretionary powers upon the Central Government to call upon an insurer to comply with the directions given by it to him Such directions can be given only in cases where the Central Gavernment is satisfied that the said insurer is paying remuneration to any person on a scale disproportionate to his resources and not in accordance with the normal standard prevailing in insurance business Remuneration may partake of commission or otherwise, *i e*, it may be also a salary or partly salary and partly commission The criterion for taking actions under this sub-section are (*i*) payment to any person, (*ii*) remuneration either by way of commission or otherwise, or (*iii*) a disproportionate scale, (*a*) which is against the resources of the insurer concerned, and (*b*) not in accordance with the normal standards prevailing in insuerance business The payment of remuneration spoken of in this sub-section, relates to (*i*) all insurance business transacted by him when he is an insurer within the meaning of the definition in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 (*ii*) all insurance business transacted by an insurer in India when he is an insurer other than those defined in the aforesaid two sub-clauses of clause (9) of section 2 of the Act

One of the directions that can be issued by the Central Government pursuant to this sub-section is to require the alteration of any of the terms of the contract entered into by the insurer with the person receiving payment in excess within the meaning of this sub-section When any such directions are issued, it is obligatory upon the insurer to whom such directions are issued to comply with them within six months The period within which compliance with its directions has to be made may also be stated in the direction itself But in any case its compliance has to be made within six months from the date of the receipt of the requisition from the Central Government

The employee of the insurer who is likely to be affected by the alteration of terms has the option to accept the altered terms or to refuse to accept them In the latter case he has to tender his resignation But his resignation on account of the altered terms being not acceptable to him would not entitle him to claim any compensation from the insurer on account of the breach of contract occasioned by virtue of the alterations of the terms of his existing contract with the insurer concerned The alteration having to be made under directions from the Central Government in conformity with the provisions of this sub-section, the insurer concerned is saved from the liability of payment of compensation to which he would have been otherwise liable in breach of contract for damages under the general law of the land

The employee who resigns on account of altered terms being not acceptable to him suffers from another disability, namely, that he will not be paid his renewal commission in respect of all premiums paid after the date of his resignation at the agreed rate but will be paid such renewal commission at a rate which is approved by the Central Government in this behalf

5 Submission of a return, insurer's duty, sub-section (2)—Sub-section (2) of this section is mandatory The provisions herein enjoin on every insurer to submit to the Controller a statement in the prescribed form showing therein the remuneration paid by him to any person, whether by way of commission or otherwise where such remuneration exceeds the sum of five thousand rupees in any year The return has to be submitted before the close of the month following every year But no such statement is required to be filed where such remuneration paid to his employees does not exceed the sum of five thousand rupees in any year in respect of any of his employees

Rule 31 of the Insurance Rules, 1939, provides that the statement of emoluments exceeding Rs 5,000 to be furnished under this sub-section shall be in Form No XV

6 Power of the Controller, sub-section (3)—Sub-section (3) of this section confers powers upon the Controller to issue a notice upon an insurer requiring him to submit certified copies of the agreement between the insurer and his insurance agent who must not be a chief agent, principal agent or special agent or any person when the receipt of remuneration by such insurance agent or the person concerned exceeds Rs 5,000 in any year The Controller's requisition must be in writing and must specify the date within which the insurer shall have to comply with it When such notice is received by insurer, it is his duty to comply with that requisition mentioned in the notice and within the time specified therein But the Controller has no such power when the remuneration though it exceeds Rs 5,000 relates to a chief agent, principal agent or special agent

Limitation on employment of managing agents and on the remuneration payable to them

32 (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of the business, then, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into by the insurer, such managing agent shall cease to hold office on the expiry of three years from the commencement of this Act and no compensation shall be payable to him by the insurer by reason only of the premature termination of his employment as managing agent

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of an insurer being a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer as remuneration for his services as managing agent more than two thousand rupees per month in all, including salary and commission and other remuneration payable to and receivable by him, for his services as managing agent

SYNOPSIS

1 *Object and scope*
2 *Managing agent, meaning of*
3 *Managing agent to continue for a certain period, sub-section* (2)
4 *Liability of insurer for loss of office*
5 *Remuneration of the managing agent, sub-section* (3)
(a) *"Other remuneration", meaning of*

1 Object and scope —The object of this section is to abolish managing agency system of managing insurance business whether the insurance business is carried on by any incorporated body or partnership firm or individual Sub-section (1) issues a mandate on every insurer not to appoint a managing agent for the conduct of the business after the commencement of the Insurance Act, 1939, *i e*, after 1st July, 1939, when the said Act was brought into force But the following sub-sections saved the continuance of such managing agent appointed before the commencement of the said Act for a period of three years only since the said date and the managerial remuneration of such managing agent was fixed at a fixed figure of Rs 2,000 per month which is the maximum overall remuneration to be payable to him including salary and commission and other remuneration payable to him and receivable by him for his services as managing agent This section nullifies any contract contrary to the provisions of this section Even the provisions of the Companies Act relating to the appointment of managing agent and his remuneration are excluded by virtue of this section

2 Managing agent, meaning of —*See* Note 9 under section 2

3 Managing agent to continue for a certain period, sub section (2) —While sub-section (1) prohibits appointment of managing agent in respect of insurance company and other insurer for the management of the insurance

business after the commencement of this Act, sub-section (2) saves the appointment made before the commencement of the Act of such agent But his appointment would continue only for a limited period of three years from the said date and not beyond it Such managing agent appointed before the said Act came to be commenced was to cease to hold the office on the expiry of the said period of three years, even though contrary provisions might be there in the articles of association of the company or the provisions of the Companies Act may not require such agent to relinquish his office on that day, *i e*, either under the articles of association or under the Companies Act, he could continue in office for a longer period than three years as required under this section [1] Neither the provisions in the Companies Act nor the provisions in the articles of association nor any contract between the insurer and managing agent could in any way extend the said period of three years

4 Liability of insurer, for loss of office, to managing agent, sub-section (2) —Sub-section (2) further provides that a managing agent will not be entitled to any compensation for premature termination of his office as managing agent to which he would have been otherwise entitled had not these provisions been made in this sub-section Normally and legitimately a person is entitled to claim compensation when he ceases to hold the office due not to any fault on his part [2]

5 Remuneration of the managing agent, sub section (3) —A managing agent appointed before the commencement of the Insurance Act, 1939 and continuing in office for a limited period of three years thereafter must not accept from the insurer as remuneration for his services as managing agent more than two thousand rupees per month in all This amount of Rs 2,000 would include his salary and commission and other remuneration payable by him for his services as managing agent

Under section 360 of the Companies Act, 1956, the compensation which may be paid by a company to its managing agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years, whichever is less, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held the office for a lesser period during such period [2]

The overall amount of Rs 2,000 per month payable to the manager agent under this sub-section is irrespective of the provisions in the Companies Act or in the subsisting contract between the insurer and the managing agent providing a greater amount than Rs 2,000 A mandate has also been issued to the insurer not to pay to the managing agent a greater sum than Rs 2,000 for his remuneration which would include his salary, commission and other remuneration either payable to him or receivable by him for his services as such

(*a*) *"Other remuneration", meaning of*—The expression other 'remuneration' would include any expenditure incurred by the insurer for the managing agent on rent free accommodation and other benefits and amenities as defined in explanation to section 128 of the Companies Act, 1956

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1 *See* also Note 9 under S 31A *supra* Agent under the Companies Act 1 [illegible]
2 For remuneration payable to the Managing Ss 348, 349 and 350 of that Act

Prohibition of common officer and requirement as to whole-time officer

32A (1) A managing director or other officer of an insurer specified in sub clause (*b*) of clause (9) of section 2 and carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company

Provided that the Central Government may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other

(2) Where an insurer specified in sub-clause (*b*) of clause (9) of section 2 has a life insurance fund of more than twenty-five lakhs of rupees or insurance funds totalling more than fifty lakhs of rupees, the manager, managing director or other officer of the insurer shall be a whole-time employee of the insurer

Provided that the Central Government may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer

(3) Nothing in this section shall prevent—

(*a*) the manager, managing director or other officer of an insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Central Government ,

(*b*) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business being the manager, managing director or other officer of an insurer not carrying on life insurance business ,

(*c*) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business ,

(*d*) an officer in the employment of an insurer from giving professional advice

Explanation —In this section the expression 'officer' does not include a director

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Management of life insurance company with a banking or investment or another life insurance company, prohibited, sub section* (1)
5 *Common management permitted in certain cases, proviso to sub-section* (1)
6 *Whole-time employment when necessary, sub section* (2)
7 *Part-time employee his appointment, proviso to sub-section* (2)
8 *Common manager, managing director or officer appointment of sub-section* (3)

1 **Legislative changes**—Section 32A has been inserted by Act XLVII of 1950

2 **Object and scope**—The object of this section is "to prohibit insurers and banks from having common officers and to require insurers of more than a certain size to have only whole-time officers"[1] But exception is made in sub-section (1) where the Central Government has been given the discretion to permit such common officers in cases of amalgamation of two insurance companies or transfer of business of one insurer to another Further exceptions have also been made in sub-section (3), thus, insurer and its subsidiary company may have common officers when approval is accorded by the Central Government, or insurer carrying on life insurance business may have common officers with an insurer not carrying on life insurance business, or insurers carrying on general insurance business may have common officers in respect of their respective branches in the same town The prohibitions envisaged in sub section (1) will not apply to an officer giving professional advice to two or more insurers So also these prohibitions do not apply to a director, that is to say, a director of one insurance company can be a director of another For the efficient management of life insurance or other insurance business provisions for appointing manager, managing director or other officer as a whole-time employee of the insurer has also been made in this section The Central Government have also been given the power to permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer

3 **Applicability**—The provisions of this section are applicable directly to an insurer specified in sub-clause (*b*) of clause (9) of section 2 of the Act and carrying on life insurance business, that is the insurer must be a body corporate incorporated under any law for the time being in force in India or it stands to any such body corporate in the relation of a subsidiary company within the meaning of the Companies Act, 1956 (previous Act VII of 1913). Indirectly it also applies to a banking company or an investment company[2]

4 **Management of insurance company common with a banking or investment company prohibited, sub-section (1)**—What sub-section (1) prohibits is the management of a life insurance company by a managing director or other officer who is also the managing director or other officer of a banking company or of an investment company or a life insurance company Thus a managing director or a manager or any officer of a life insurance company cannot hold the office of a managing director or a manager or any officer therein in any banking company or an investment company or life insurance company Conversely, a managing director or a manager of any office of a banking company or investment company cannot hold the same office in a life insurance company Similarly where *A* is the managing director of an insurance company *D* he cannot hold the same office with an insurer *E* carrying also on life insurance business

5 **Common management permitted in certain cases proviso to sub-section (1)**—Proviso to sub-section (1) permits common management of two life insurance companies when they propose to amalgamate their businesses into one or when one insurer transfers his business to another but such common management must be with the permission of the Central Government This is where *A* and *B* propose to amalgamate their two businesses of life insurance into one or where *A* seeks to transfer his life insurance business to *B* an application can be made to the Central Government either by *A* or by *B* or

1 *See* Notes of the Government of India 2. Notes 5 (*a*) and 7 (*e*) and (*b*) under S 2 *supra*

by both to permit the managing director or other officer of *A* to be the managing director or other officer of *B* and *vice versa* When his or their application is granted by the Central Government permitting him or them to have common managing director or other officer, then only the managing director or other officer of *A* may also hold the office of the managing director or other officer in *B* otherwise no common managing director or other officer would not be permitted as sub section (1) would be bar to such appointment

6 **Whole-time employee, when necessary, sub-section** (2) —Sub section (2) of this section provides for the circumstances when the manager managing director or other officer of the insurer must be in the whole-time employment of the insurer The circumstances when such whole time appointment must be made are—

(i) where an insurer being an incorporated body under the Companies Act and as defined in sub clause (*b*) of clause (9) of section 2 has a life insurance fund of more than twenty five lakhs of rupees and

(ii) where such an insurance company has insurance fund totalling more than fifty lakhs of rupees

Thus, where an insurance company carries on life insurance business only, it must have its manager, managing director or other officer to be in its whole-time employment when its life insurance fund exceeds Rs 25 00 000 and it carries on other insurance business when its insurance funds total more than Rs 50,00,000

7 **Part time employee his appointment, proviso to sub-section** (2) —Apart from the appointment of whole-time manager, managing director or other officer an insurance company having a life insurance fund exceeding Rs 25,00,000 or insurance funds totalling more than Rs 50 00,000, as the case may be, may also appoint part time manager, managing director or other officer in its establishment But before any such appointment is made the insurance company must seek the permission of the Central Government to permit it to so appoint and when the Central Government accords such permission wherein it will specify the person who can be appointed on part time basis that the insurance company will only be entitled to appoint that person so specified on a part time basis

8 **Common manager managing director or officer, appointment of, sub section** (3) —The bar to the appointment of a common manager managing director or other officer between a life insurance company and a banking company, between a life insurance company and an investment company, and between a life insurance company and a life insurance company will not apply to the following cases namely,—

(*a*) where the manager, managing director or any officer is appointed by an insurance company as the manager managing director or the officer in its subsidiary company and the previous approval of the Central Government has been obtained in that behalf,

(*b*) where the manager, managing director or any officer of an insurer exclusively carrying on life insurance business is appointed as the manager, managing director or an officer of an insurer who does not carry on life insurance business but carries on other kinds of insurance business

(*c*) where an officer of a branch of one insurer who carries on general insurance business is appointed as an officer of a branch in the

same town of another insurer who also carries on general insurance business, and

(*d*) where an officer who gives professional advice of one insurer is appointed as such officer in another where also he is engaged or employed to give professional advice

In *Explanation* appended to sub-section (3), the word officer has been defined to mean not a 'director" Hence, a director of one insurance company can be appointed a director of another insurance company or companies subject to this that he must not hold office at the same time as director in more than twenty companies as provided in section 275 of the Companies Act, 1956

INVESTIGATION

Power of investigation

33 (1) The Central Government may at any time, by order in writing, direct the Controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him

Provided that the Controller or the other person may, wherever necessary, employ an auditor or actuary or both for the purpose of assisting him in any investigation under this section

(2) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the person directed to make the investigation under sub-section (1) all such books of account, registers and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the insurer as the said person may require of him within such time as the said person may specify

(3) Any person directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly

(4) On receipt of any report under sub-section (1), the Central Government may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing,—

(*a*) require the insurer to take such action in respect of any matter arising out of the report as the Central Government may think fit, or

(*b*) direct the Controller to cancel the registration of the insurer, or

(*c*) direct the Controller to apply to the court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (*b*) or not

(5) No order made under this section other than an order made under clause (*b*) of sub section (4) shall be capable of being called in question in any court

(6) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over other debts due from the insurer and shall be recoverable as an arrear of land revenue

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Provisions whether offend Article* 14 *or Article* 20 (*2*) *of the Constitution*
5 Prima facie *satisfaction of the Government, sufficiency of sub-section* (1)
6 "*Affairs of any insurer*" *sub section* (1)
7 *Order of investigation its nature and form, sub section* (1)
8 *Powers of the Controller or the investigator Proviso to sub section* (1) *and sub sections* (2) *and* (3)
9 *Duties of the insurer and his officers, sub-section* (2)
10 *Report of investigation, sub section* (4)
(A) *section* 3 (5D), *whether inconsistent with section* 33 (4) (*c*) *of the Act ?*
11 *Order of Central Government not to be called in question in court, sub-section* (5)
12 *Expenses of investigation sub section* (6)
13 *Analogous provision under the English Insurance Companies Act,* 1958

1 **Legislative changes** —Sections 33 and 34 were substituted by Act XXV of 1942 Thereafter section 33 was substituted for old sections 33 and 34 by Act XLVII of 1950 The most notable change that had been brought about in the present section is that the power of the Court to interfere with the order of investigation under sub section (2) of the old section 33 has been taken away although the Court's power to call in question the order of the Controller directing the cancellation of the registration of the insurer has been retained in sub-section (5) of the present section

2 **Object and scope** —The object of investigation of the affairs of an insurer is to find out whether any irregularities have been committed or not In such a case there is no accusation, either formal or otherwise, against any specified individual although there may be a general allegation that the affairs are irregularly, improperly or illegally managed but who would be responsible for the affairs which are reported to be irregularly managed is a matter which would be determined at the end of the investigation The interets of the insurer is the interest of several persons specially the policy-holders and as the business of the insurer has to be carried on through human agency and it is not unlikely that may sometimes give rise to irregularities and malpractices in the management of the affairs of the insurer If persons in charge of the management of any insurer or insurance company abuse their position and make personal profit at the cost of the creditors contributories and others interested that raises a problem which is very much different from the problem of ordinary misappropriation or breach of trust The provisions contained in this section for investigation into the affairs of the insurer provide for

necessary safeguards and checks against a possible abuse of power vested in the managers [1]

The power conferred on the Central Government under this section to direct investigation into the affairs of any insurer is unrestricted Th power need not be invoked by any person but such powers the Central Governm can exercise *suo motu* and at any time It can direct the investigation to be made by the Controller of Insurance or by any person whom it may name i the order itself On receipt of the report of the investigation the Central Government has also been given certain powers to take actions against the insurer on report It may direct the Controller to take actions against the insurer as provided in clauses (*b*) and (*c*) of sub section (4) or it may direct the insurer to take action in respect of any matter arising out of the said report as provided in clause (*a*) of the said sub-section

Certain powers have also been conferred on the Controller and the investigator, as the case may be When he is so directed to investigate into the affairs of any insurer, he has the power (*i*) to employ an auditor or actuary or both to assist him in such investigation, (*ii*) to require the insurer's office to produce such books of account, register and other documents as he will direct to produce, (*iii*) to call upon such officer to furnish him with any statement and information that he may require of such officer, and (*iv*) to examine any officer by administering oath

Duties have also been imposed upon every manager, managing director or other officer of the insurer to produce before the Controller or the investigator, as the case may be, all books of account, registers or other documents which are in his custody or power and to furnish him with any statements and information as the Controller or the investigator may require in this behalf within the time which he may specify Duties have also been imposed upon the insurer to comply with the directions of the Central Government by taking such action in respect of any matter arising out of the report of the Controller or the investigator The insurer has also been made liable for all costs of such investigation and such expenses are realisable from the insurer as a public demand

Provision has also been made for giving the insurer an opportunity of being heard before the Central Government proposes to take any action upon the report of investigation made either by the Controller or by the person appointed by the Central Government for the purpose, but no such opportunity has been given to him before the Central Government makes an order to investigate into his affairs under this section

3 Applicability—The provisions of this section are applicable to all insurers, whether incorporated bodies, firms or individuals, whether indigenous or foreign or whether they are carrying on life insurance or other kinds and classes of insurance business including the Life Insurance Corporation of India The section will apply to an insurer even who has closed his business

4 Provisions whether offend against Art 14 or Art 20 (1) of the Constitution—The Supreme Court in *Ram Krishna Dalmia* v *Justice Tendolkar*[3] has observed that if the classification on which legislation is based is founded on an intelligible *differentia* which distinguishes persons or things that are grouped together from others left out of the group and if the *differentia* has rational relation to the object sought to be achieved, the

1 *See Narayanlal* v *M P Mistry* (1961) 1 S C R 417 : (1961) 1 S C J 353 (1961) 1 S C A 531 : (1960) 30 Com Cas 614 1961 S C 29

2 *V F & G Insurance Co* v *Mangal Fire & Rats* 1960 S C 971

3 1959 S C R 279 1958 S C 538

classification does not offend Art 14 of the Constitution The persons in management of the affairs of insurers can be classed by themselves as distinct from other individual citizens A citizen can and may protect his own interest but where the financial interest of a large number of citizens is left in charge of persons who manage the affairs of the insurers it would be legitimate to treat such insurers and their managers as a class by themselves and to provide for necessary safeguards and checks against a posssible abuse of power by such persons When the provisions of this section dealing with the investigation of affairs of the insurer are considered from this point of view, there would be no difficulty in holding that Art 14 of the Constitution is not violated by section 33 of the Act [1]

The investigation into the affairs of an insurer cannot be regarded as a proceeding started against any individual after framing an accusation against him Besides it is quite likely that in some cases investigation may disclose that there are no irregularities, in such cases the Central Government will have no occasion to take any action against the insurer at all At the commencement of the investigation and indeed throughout its proceedings there is no accused person no accuser and no accusation against anyone that he has committed an offence Hence a general enquiry and investigation into the affairs of an insurer thus contemplated cannot be regarded as an investigation which start with an accusation contemplated in Art 20 (3) of the Constitution It may therefore be said that the provisions of this section do not offend against Art 20 (3) of the Constitution [2]

5 **Prima facie satisfaction of the Government, sufficiency of sub-section (1)** —It is only just and proper that when an order is being passed under section 33 read with section 2D of the Act, it should show on the face of it that the Central Government was *prima facie* satisfied that the liabilities had remain unsatisfied or not otherwise provided for, for it is only when the liabilities have not been satisfied or otherwise provided for that an order under this section read with section 2D would be justified in the case of an insurer who has closed his business The Government need not wait for the proof that where liabilities which are unsatisfied or not otherwise provided for before making an order under this section because such proof would only be available after investigation in the affairs of the insurer But the fact that the order does not on the face of it show that the Central Government considered this aspect of the matter would not make the order bad, if in subsequent proceedings, taken to challenge it, it is shown that there were materials before the Central Government which would justify its coming to *prima facie* conclusion that the liabilities had not been satisfied or otherwise provided for, and therefore an investigation into the affairs was called for [3]

6 **"Affairs of any insurer", sub-section (1)** —The contention that because the word insurer has been used in this section or section 2D, those sections can only apply to insurers who are actually carrying on business cannot necessarily succeed and the Courts have to see whether in the context of these provisions an insurer will also include a person who was an insurer but has closed his business This section will certainly apply to a case where all classes of insurance business have been closed so long as the liabilities remained unsatisfied or not otherwise provided for [4]

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1 See *Nerayanlal* v *M P Mistry* 1961 S C 29 at p 41 observation made in connection with S 239 and S 240 of the Companies Act 1956

2 *Narayanlal* v *M P Mistry supra*

3 *V F & G Insurance Co* v *Messrs Fraser Ross* 1960 S C 971

4 *V F & G Insurance Co* v *Messrs Fraser & Ross* 1960 S C 971 *see* also Note 2 under S 2D *supra*

7 Order of investigation, its nature and force, sub section (1)— Although this section does not specifically provide as to in respect of which affairs of the insurer and under what circumstances an order of investigation can be made but in order to that effect can be made in respect of all the affairs concerning the business of insurance of the insurer Such affairs may cover a field of wide range, such as, investment, loans and management, doing business in contravention of the provisions of the Act or the Rules made there under, failure to comply with the requisitions made under the Act or the Rules and the affairs of a like nature The circumstances under which such an order can be made may be equated with those under which the Central Government can make a similar order under section 237 of the Companies Act, 1956, such as, where the circumstances suggest—

(i) that the business is being conducted with intent to defraud the creditors members or any other persons or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any members, or that the company was formed for any fraudulent or unlawful purpose , or

(ii) that the persons concerned in the formation of the company (if the insurer is a company) or the management of the affairs have in connection therewith been guilty of fraud misfeasance or other misconduct towards the company (insurer) or towards any of its members or policy-holders , or

(iii) that the members of the company (if the insurer is a company) or (the policy-holders) have not given all information with respect to its or his affairs which they might reasonably expect

With regard to the form of the order (i) it must be in writing (ii) it must direct the Controller to investigate or (iii) it must specify the name of the person who is to investigate if he be not the Controller, and (iv) it must direct the Controller or the investigator named to submit his report of such investigation to the Central Government

8 Powers of the Controller or the investigator, proviso to sub-section (1) and sub-sections (2) and (3) —When the Controller or a person named in the order has been directed to investigate the affairs of an insurer, he has power so far as thinks it necessary for the purpose of his investigation to appoint an auditor or actuary or both to assist him in such investigation Apart from this power he has also certain powers in relation to insurer manager managing director or other officer These powers are—(i) he can require the production by any of those officers of the insurer of books of account, registers and other documents in his custody or power relevant to the investigation (ii) he can require of any of them to furnish him with any statements and information concerning the affairs of the insurer, and (iii) he may also examine on oath any of the above persons and may administer an oath

Under the English Companies Act 1948, if any such person refuses to produce any book or document or to answer any question, the inspector may certify to the court that there has been such refusal whereupon the court may after inquiring into the case, treat such refusal as contempt of court and punish the offender accordingly If any such person refuses to answer questions on the ground that shorthand-writer instructed by the inspector to

present, he is not thereby excused, but is thereby in contempt of court [1] Under the said Act, the inspector appointed for the purpose of investigation has power to investigate also the affairs of subsidiaries of the company, its holding company, or co-subsidiaries, and, if relevant, to report thereon [2]

9 **Duties of insurer and his officers, sub-section** (*2*) —In order to enable the Controller or the investigator to carry out his investigation, a duty is cast upon the manager, managing director and other officers if the insurer is a company or upon the insurer himself to give all assistance which they are reasonably able to give He must produce all such books of account, registers and other documents in his custody and power and also furnish the Controller or the investigator with any statements nd information within his knowledge Such production of books, etc , or furnishing the statements and information must be made within the time specified by the Controller or the investigator Impliedly, the duty to give all assistance exists whether or not the Controller or the investigator specifically approaches the officer or the insurer and any such person is bound to offer his assistance without waiting to be asked [3]

10 **Report of investigation, sub section (4)** —On completion of the investigation by the Controller or the person named in the order of investigation a report is to be drawn and submitted to the Central Government On receipt of such report, the Central Government if it proposes to take any action against the insurer, will afford the insurer to make a representation in connection with that report On consideration of the said representation and the report, the Central Government may order in writing any of the following

(*a*) the insurer to take such action in respect of any matter arising out of the report as the Central Government may think fit, or

(*b*) the Controller to cancel the registration of the insurer, or

(*c*) the Controller to apply to the court for the winding up of the insurer if a company, whether the registration of the insurer has been cancelled under clause (*b*) or not

Such a report is not in itself a legal decision in the sense that a judgment of the court is It is merely an expression of the findings and opinions of the Controller or the investigator and such findings and opinions expressed therein do not bind any person as the findings of the court do [4] Action upon such report can only be taken by the Central Government and in that case the insurer has got the right to make his representation against the findings and opinion expressed therein But if the Central Government does not propose to take any action on the report, the latter remains a dead letter and the insurer too has no right of representation against the said report

(*A*) *Section 3 (5) whether inconsistent with section 33 (4) (c) of Act?*—It is true that under section 3 (5D) of the Act the Controller may himself apply for winding up but this provision is not inconsistent with clause (*c*) of sub-section (4) of this section which enables the Government to direct the Controller to make an application for winding up if they think that it would be desirable to do so on a perusal of the report on the investigation [5]

1 *Re Gezmont British Pictures Corporation Ltd* (1940) 1 Ch 506

2. *See* S 166 of the English Act

3 *See* S 167 (1) of the English Companies Act 1948.

4 *See* the (Second) Report on the *Savoy Hotel Ltd and the Berkley Hotel Co Ltd* 1954 (H M S O) issued June 11

5 *I P & C Insurance Co v Messrs F & R. Chartered accountants* 1959 Mad 336 at p 339

11 **Order of the Central Government not to be called in question in court, sub-section (5)**—Under sub-section (2) of the old section 33 the court was given the power to interfere with the order of investigation Under the said sub-section of the old section 33 the company could show not only that order of investigation was issued without good reason but also the reasons gave have disappeared and that investigation was not necessary [1]

Present section as it now stands is that orders under clauses (*a*) and (*b*) of sub-section (4) are not capable of being called in question in any court b the power of the court to call in question an order under clause (*b*) of that s section is retained, that is, where the Controller cancels the registration of th insurer under direction from the Central Government, such order can b called in question by the court This is what sub-section (5) of this section prov Clause (*a*) of sub-section (1) of section 110 of the Act provides for an appeal t the court from an order under section 3 cancelling the registration of an insurer It is not certain whether the order of the cancellation of the registration b the Controller under directions from the Central Government could be call d question by the court by way of appeal or by way of original applicatio It seems that such an order should be called in question by way of origin application and not by way of appeal as provided in section 110 of the Act

Again, where the Superintendent of Insurance does not take act under section 33 to wind up an insurance company, that circumstance receive consideration by the court when it is moved under section 1 Companies Act, 1913, for the winding up of that company [3]

12 **Expenses of investigation, sub-section (6)**—All expenses of and incidental to any investigation made under this section are payable by th insurer and the costs of such investigation shall have priority over other d due from the insurer and shall be recoverable as an arrear of land revenue

Section 245 of the Companies Act, 1956, provides that the exp nses of and incidental to an investigation by an inspector appointed by the Central Government under section 235 or section 237 shall be defrayed in the first instance by the Central Government but certain persons mentioned therein shall be liable to reimburse the Central Government in respect of such expenses to the extent also mentioned therein Moreover, the amount of exp nses in respect of which any company body corporate managing agent, secretary and treasurers, associate, managing director or manager, is liable to reimburs th Central Government shall be recoverable from them as an arrear of land revenu

13 **Analogous provision under the English Insurance Companies Act 1958**—The Board of Trade has been empowered under section 14 of th English Act to investigate into the affairs of an insurance company of doubt solvency and for that purpose it can appoint one or more inspectors Th English Act confers right upon the company to object to an investigat being made in respect of its affairs and in that case the Court decides whe an investigation shall take place The expenses of and incidental to s investigation carried out by inspector shall be defrayed by the Board subj to provisos (*a*) and (*b*) to section 14 of the said Act [5]

34 [*Omitted*]

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1 *Tropical Insurance Co Ltd v Superintendent of Insurance* I L R (1943) Lah 691 203 I C 395 44 P L R 288 1942 Lah 267 (in that case the mode of dealing with application under section 33 by Dist trict Judge was pointed out and against the decision of the District Judge revision under section 115 of Code of Civil Procedure to the High Court lay)

2 *See* Note 13 under S 2 *supra*.

3 *Sudhira Nath Bhaduri v Bihar Insurance Co Ltd* 20 Pat 518 1941 F 603 (decision under the old section)

4 For expenses of investigation under the English Act *see* S 170 of the English A

5 *See* S 14 of the Insurance Companies Act 1958

AMALGAMATION AND TRANSFER OF INSURANCE BUSINESS

Amalgamation and transfer of insurance business

35 (1) No life insurance business of an insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 shall be transferred to any person or transferred to or amalgamated with the life insurance business of any other insurer except in accordance with a scheme prepared under this section and sanctioned by the Controller

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme

(3) Before an application is made to the Controller to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor shall, at least two months before the application is made, be sent to the Controller and certified copies, four in number, of each of the following documents shall be furnished to the Controller and other such copies shall during the two months aforesaid be kept open for the inspection of the members and policy-holders at the principal and branch offices and chief agencies of the insurers concerned, namely,—

(*a*) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer ,

(*b*) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer, prepared in the form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule ,

(*c*) actuarial reports and abstracts in respect of the insurance business of each of the insurers so concerned, prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned ,

(*d*) a report on the proposed amalgamation or transfer, prepared by an independent actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at any time in the five years preceding the date on which he signs his report ,

(e) any other reports on which the scheme of amalgamation or transfer was founded

The balance-sheets, reports and abstracts referred to in clauses (*b*), (*c*) and (*d*) shall all be prepared as at the date at which the amalgamation or transfer if sanctioned by the Controller is to take effect, which date shall not be more than twelve months before the date on which the application to the Controller is made under this section

Provided that if the Controller so directs in the case of any particular insurer there may be substituted respectively for the balance-sheet, report and abstract referred to in clauses (*b*) and (*c*) prepared in accordance with this sub-section certified copies of the last balance-sheet and last report and abstract prepared in accordance with sections 11 and 13 of this Act or sections 7 and 8 of the Indian Life Assurance Companies Act, 1912, if that balance-sheet is prepared as at a date not more than twelve months, and that report and abstract as at a date not more than five years before the date on which the application to the Controller is made under this section

(4) * * * * *

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Amalgamation or transfer meaning of*
5 *Transfer or amalgamation prohibited except as provided in the section sub section (1)*
6 *Scheme its contents, sub-section (2)*
7 *Pre requisites to an application for sanction of a scheme sub section (3)*
8 *Powers of the Controller*
9 *Balance sheet and reports preparation of*

1 Legislative changes—(*a*) The words 'any person or transferred to' occurring in sub-section (1) of this section were inserted by Act XX of 1940

(*b*) The word Controller occurring in the section was substituted by Act XLVII of 1950

(*c*) The words certified copies other such copies shall' were substituted by Act XIII of 1941

(*d*) Clauses (*b*) and (*c*) of sub-section (3) were substituted for the original clauses (*b*) and (*c*) by Act XX of 1940

(*e*) Sub-section (4) of this section was omitted by Act XLVII of 1950 (Note that under this sub-section the court was empowered to extend time for the insurer whose business was to be transferred to or amalgamated for registration under section 3 and for payment of the instalments of the deposit under section 7 or section 98)

2 Object and scope—The object of this section is to prescribe a procedure which is to be followed where the life insurance business of an insurer is proposed to be transferred to or amalgamated with the life insurance

business of another where either of the two insurers or both of them are domiciled or incorporated in India A similar provision was made in section 20 of the Indian Life Assurance Companies Act 1912 (now repealed) where provisions were made for the amalgamation or transfer of any of the company's business to another and in this regard the directors of any one or more of such companies could apply to the court, by petition, to sanction the proposed arrangement A similar provision was also to be found in the English Assurance Companies Act, 1909, whereby amalgamation of insurance companies was prohibited without the sanction of the court This provision in the English Act was introduced to obviate the hardships caused to the policy-holders by indiscriminate amalgamations of insurance companies made pursuant to the powers under the deeds of settlement or other documents constituting the company or pursuant to special resolutions passed by the companies not inconsistent with the provisions of the said deeds [1] The English Assurance Companies Act, 1909, has now been replaced by the Insurance Companies Act 1958, wherein provisions imposing restrictions and conditions on the amalgamation of insurance companies and the transfer of insurance business from one company to another have also been made These restrictions apply to proposals for amalgamation only where any of the companies concerned carries on long-term business or employers' liability insurance business and to proposals for the transfer only of these companies carrying on the businesses of insurance aforesaid [2]

The intention of sections 35 and 36 of this Act is to protect the shareholders from having to accept a scheme to which they have not agreed Such protection however may be given up by shareholders by inserting in the scheme approved by them a clause empowering the directors to modify it So far as the policy-holders are concerned their protection is left in the hands of the Controller That is the policy of the Insurance Act and hence the Controller hears them It cannot be contended with substance that sections 35 and 36 of this Act are not in *pari materia* with section 153 of the Companies Act, 1913 [3]

The first step in the procedure for amalgamation or transfer under this section is the preparation of the scheme, the second step is the giving of at least two months' notice to the Controller accompanied by a statement showing the nature of transfer or amalgamation and the reasons therefor, the third step is the keeping open for inspection of the draft agreement, balance-sheets reports, and abstracts submitted to the Controller at the principal and branch offices and chief agencies of the insurers concerned so that the members and the policy-holders may have inspection of the same, and the fourth step under this section will be the application to the Controller for sanction of the said scheme

This section also confers certain powers on the Controller, namely, by way of direction to substitute certified copies of the lost balance-sheet and report and abstract prepared in accordance with the provisions of sections 11 and 13 of this Act for those required under clauses (*b*) and (*c*) of sub-section (3) of this section, *i e*, the balance sheets, actuarial reports and abstracts prepared as at the date at which the proposed amalgamation or transfer if sanctioned by the Controller is to take effect which date should not be more than twelve months before the date when the application to the Controller under this section is made

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1 See *Forrest v Nicolls* (1857) 6 H L C 401 *Re Sovereign Life Insurance Co* (1889) 42 Ch D 540

2 *See* sections 11 and 12 of the Insurance Companies Act 1958

3 *Shyamaji Lal v Controller of Insurance* (1962) 32 Com Cas 258 1962 S C. 1355 at p 1361

This section although it is a complete Code in respect of amalgamation or transfer of life insurance business, suffers from one lacuna in that it does not mention the person or persons who can apply to the Controller for sanction As has been observed by the Supreme Court in *Shyamapada's case* (*supra*) that the provisions of this section are in *pari materia* with section 153 of the Companies Act, 1913, now section 391 of the Companies Act, 1956, the persons mentioned therein, *i e*, the company or any creditor or any member or the liquidator where the company is being wound up can apply for such sanction Besides the policy-holders' right to file such an application has also to be conceded It has been said that statutes in *pari materia* ought to receive uniform construction, notwithstanding any slight variations of phrase, the object and intention being the same [1]

3 **Applicability** —The provisions of this section are applicable to life insurance companies incorporated or domiciled in India Companies doing other kinds or classes of insurance business do not come within the purview of this section The amalgamation or transfer of businesses of such companies will presumably be governed by the Companies Act, 1956 The section has been applied to the Life Insurance Corporation of India

4 **Amalgamation or transfer, meaning of** —The word 'amalgamation' means a blending of substantially two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which holds the blend d undertakings that is, an amalgamation of two companies makes the shareholders in one the shareholders in the other, it makes the capital of one the capital of the other, it makes the officers and servants of the one officers and servants of the other [2] The word amalgamation' not only contemplates a state of things in which two companies are so joined as to form a new company but also the absorption and blending of one by the other [3] The meaning may be illustrated thus,—

Companies *E* and *F* want to amalgamate A new company *E* (Holdings) is formed *E* (Holdings) issues shares to the shareholders in *E* and *F* in exchange for their shares in *E* and *F* The former shareholders in *E* and *F* thus become holders of (credited as fully paid) in *E* (Holdings) *E* and *F* then are dissolved and *E* (Holdings) alters its name to *E* The amalgamation is complete [4]

Sometimes the words 'merger' or 'consolidation' are used instead of the word 'amalgamation These words are chiefly used in the statutes of the United States of America There insurance companies have no power to consolidate or become merged unless provided for by statute but there are statutes which frequently authorise such merger or consolidation and such merger or consolidation has been held to be not contrary to public policy and they must in this regard comply with statutory requirements [5]

Ordinarily it is *ultra vires* of any company to transfer its business and assets or to purchase the business of another company But such powers are derived by the companies through their memorandum of association or deed

1 *See* Maxwell Interpretation of Statutes 1962 Ed p 330

2 *Re South African Supply and Cool Storage Co* (1904) 2 Ch 268 *Re Norwich Equitable Fire Insurance Society* (1887) 57 L T 241

3 *Re Walker's Settlement* (1935) 1 Ch 567 *Re Hayes Will Trusts* (1954) 1 W L R 22

4 See *Henry Head and Co v Ropner Holdings*, (1952) Ch 124 *see* also Palmer Company Law 20th Ed p 670

5 *State v American Bonding and Casualty Co*, 238 N W 726 *Union Indemnity Co v Railroad Commission* 205 N W 417; *Austin v National Casualty Co* 147 N W 281.

of settlement or other instrument of incorporation So when a company is so authorised to transfer its business, it has power to transfer its whole business as a going concern without any cancellation or reduction of its liabilities [1]

The transaction will not amount to "transfer" where one company acquires shares in another and thus obtains controlling interest in the latter, nor will it amount to "transfer" where the two companies enter into an agreement for guaranteeing each other's policies and for mutual reinsurance [2] It is also to be remembered that a transfer sanctioned permitting one company to transfer the property, rights and liabilities to another does not automatically transfer contracts of personal service which are in their nature incapable of being transferred and no contract of service is thereby created between an employee of the transferor company and the transferee company [3]

The words "amalgamation" or "transfer" are sometimes loosely called "reconstruction" The word 're construction" has been explained thus, "Where an undertaking is being carried on by a company, and is in substance preserved and transferred, not to an outsider, but to another company, consisting substantially of the same shareholders, with a view to its being continued by the transferee company that is a re-construction, and it is nevertheless a reconstruction because all the assets of the new or resuscitated company, and all the shareholders of the transferor company are not the shareholders of the transferee company and the liabilities of the transferor company are not taken over by the transferee company "[4] A bargain between two companies by which one of them agrees to grant new policies in place of those issued by the other is a 'transfer" of business for this purpose[5], but not an arrangement for reinsuring [6]

5 **Transfer or amalgamation prohibited except as provided in the section, sub-section (1)** —Sub section (1) of this section prohibits transfer of life insurance business of one insurer to any person whether he is an insurer or not, it also prohibits transfer or amalgamation of life insurance business of any other insurer But at the same time this sub-section permits such transfer to any person or transfer or amalgamation with life insurance business of another when a scheme is prepared under this section and sanction to it is accorded by the Controller of Insurance It has already been said that the Amendment Act of 1950 has made the Controller the sanctioning authority instead of the Court Under the Companies Act 1956, court is empowered to sanction any scheme, arrangement or compromise and pursuant to that the transfer or amalgamation is made [7] Similar provisions empowering the court to sanction any scheme or arrangement for transfer and or amalgamation of companies have also been made in the English Companies Act, 1948 [8] Likewise the provisions as to certain amalgamations and transfers have been made in section 11 of the Insurance Companies Act 1958, wherein the directors of any one or more companies intending to transfer and/or amalgamate may apply to the court by petition to sanction the proposed arrangement

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1 *Ernest v Nicholls supra Era Co s* case (1962) 1 Deg J and S 29 *Re Sovereign Life* (1886) 42 Ch D 540 *Albert Life Indemnity* case (1871) 16 S J 141 *Re Thomas (William) & Co* (1915) 1 Ch 325

2 *Re Lancashire Plate-Glass Fire and Burglary Insurance Co* (1912) 1 Ch 35 *See* observation of Swinpen Eady J

3 *Nokes v Doncaster Amalgamated Collieries Ltd* (1940) 3 All E R 549 H L.

4 *Re South African Supply and Coal Storage Co supra per* Buckley J

5 *Re Esperia Guarantee* 1911 S C 1296

6 *Re Norwich Equitable Fire Assurance Society Royal Insurance Co s* claim (1887) 57 L T 241

7 *See* S 391 of the said Act.

8 *See* sections 206 and 208 of the said Act

When the court sanctions the arrangement the transfer or amalgamation is effected, but the court does not sanction the amalgamation or transfer if it appears to the court that the life policy-holders representing one tenth or more of the total amount assured in the company dissent therefrom

But the court is not bound to sanction a scheme simply because there is no opposition to it nor will it do so unless it is satisfied that it will benefit the policy-holders [1] Nor can the Court sanction a scheme which is beyond the powers of the companies involved [2]

6 Scheme, its nature and contents, sub-section (2)—The ordinary dictionary meaning of the word "scheme" is systematic arrangement proposed or a plan for doing something The 'arrangement" or "plan' which is drawn either for the proposed "transfer' or "amalgamation" is generally called the scheme Sub-section (1) enjoins that scheme for proposed "transfer" or "amalgamation" has to be prepared and sub-section (2), on the other hand, enjoins that scheme thus prepared (i) must set out the agreement under which the transfer or amalgamation is proposed to be effected (ii) must contain such further provisions as may be necessary for giving effect to the scheme But 'further provisions" referred to in this sub section are not indicated in that sub-section and have to be gathered from the different provisions made in the Act for such transfer or amalgamation

For the purpose of giving effect to the scheme it must be necessary that scheme is fair and reasonable, it is prepared in good faith and it could reasonably be supported by sensible people to be for the benefit of each class of the members or creditors concerned [3] It is also to be seen that scheme can transfer rights powers, duties and property as are capable of being lawfully transferred by a party to the scheme, if no section of the Act existed because if any part of the scheme includes anything which the parties cannot bind themselves to do, then that part of the scheme has to be treated as nullity [4]

The effect of a scheme under this section is—"to supply by recourse to the procedure thereby prescribed the absence of that individual agreement by every member of the class to be bound by the scheme which would otherwise be necessary to give it validity [5] A scheme may also involve some other proceeding such as a reduction of capital or a stay of a winding up In such a case the procedure for that purpose must be followed in connection with the procedure of the section under which the scheme is effected

Before forwarding a scheme to the Controller for sanction one will normally to be satisfied on three matters, *viz*, (i) the provisions of the statute have been complied with, (ii) the class must have been fairly represented and (iii) the arrangement must be such as a man of business would reasonably approve [6] Sometimes the word 'scheme is called 'an arrangement' But the word "arrangement" is a word of very wide import, and its meaning is not to be limited to something analogous to a compromise All modes of reorganising the share capital, including interference with preferential and other rights attached to shares can properly form part of an arrangement between members [7]

1 *Re Hearts of Oak (No 2* (1914) 30 T L R 436 ; *Hutcheson (Petitioner)* 1931 S C 3
2. *Re Sovereign Life supra*
3 *In re Alabama New Orleans etc Rly Co* (1891) 1 Ch 213 *In re English Scottish and Australian Chartered Bank* (1893) 3 Ch 385
4 *Re Stanhope* (1958) 3 All E R 273 ; *Nokes v Doncaster Amalgamated Collieries Ltd* (1940) 3 All E R 549 H L ; *Re L Hotel Co Ltd* (1946) 1 All E. R. 519
5 *Re Guardian Assurance Co* (1917) 1 Ch 441 observation of Younger J at p 458
6. *Re Anglo Continental Supply Co* 1922 2 Ch 723
7 *Re General Motor Cab Co* (1911) 1 Ch 811 ; *St James Court Estate* (1944) 1 Ch 6 ; *Guardian Assurance Co supra* ; *Commercial Bank v Hindustan Corporation* 1960 Cal 637

When a scheme is sanctioned it becomes binding on all the creditors, and the liquidator and the contributories and its validity cannot be questioned by any shareholder After sanction the scheme comes to have statutory force and has greater sanctity than a mere agreement between the parties affected, it cannot be even varied by mere agreement of the parties [1]

7 **Prerequisites to an application for sanction of a scheme, sub-section (3)** —Before an application is made to the Controller to sanction any scheme prepared under sub-sections (1) and (2) the person or persons responsible for preparing the scheme and desiring to have the same sanctioned by the Controller must fulfil certain conditions laid down in sub section (3) of this section as a condition precedent for making the said application These prerequisites to such an application are—

(i) (*a*) notice of the intention to make the application, (*b*) a statement of the nature of the amalgamation or transfer, as the case may be, (*c*) the reasons for such amalgamation or transfer, and (*d*) four certified copies of each of the documents mentioned in clauses (*a*) to (*c*) of this sub-section, must be sent and/or to be furnished to the Controller at least two months before the application for sanction is made ,

(ii) Copies of the said documents mentioned in clauses (*a*) to (*c*) of this sub-section shall be kept open for the inspection of the members and the policy-holders at the principal and branch offices and chief agencies of the insurers concerned during the period of two months, i *e* , covering the same period of notice to the Controller , and

(iii) the balance-sheets, reports and abstracts, referred to in clauses (*b*) (*c*) and (*d*) of this sub-section shall be prepared as at the date at which the amalgamation or transfer if sanctioned by the Controller is to take effect which date shall not be more than twelve months before the date on which the application to the Controller is made under this section That is to say, the balance sheets, reports and abstracts must bear the date not later than a year which must be a calendar year when application for sanction to the Controller is made

Copies of documents which must be certified to be true copies and they ist each be four in number, which are required to be furnished to the ntroller are—

(*a*) the draft of the agreement or deed whereby proposal to effect the proposed amalgamation or transfer is made ,

(*b*) balance sheets of the insurance businesses of each of the insurers concerned or involved in amalgamation or transfer

(*c*) actuarial reports and abstracts of the life insurance business of each of the insurers involved in the amalgamation or transfer ,

(*d*) an independent report of an actuary who has never been professionally connected with any of the parties concerned in the amalgamation or transfer at least for a period of five years before the date on which he signs such report and his report should be a report on the proposed amalgamation or transfer ; and

[1] *Srimati Premila Devi* v *Peoples Bank* 43 C W N 205 (P C) 1938 P C 284

(e) any other reports on which the scheme of amalgamation or transfer was founded Such reports may be directors' report, creditors' report, policy-holders' report and the like

Sub-section (2) of section 11 of the English Insurance Companies Act 1958, also requires that before any application is made to the Court for sanction of any arrangement for amalgamation and transfer, (a) notice of the intention to make the application shall be published in the Gazette, (b) a statement of the nature of the amalgamation or transfer, together with an abstract containing material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary shall be, transmitted to each policyholder of each company, and (c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the Gazette It has been held that failure to transmit the reports to the policy-holders will not cure the defect by subsequent consent of the policy-holders [1] But these requirements need not be complied with where the amalgamation and transfer relate to employers' liability insurance business So also where the company is registered or has its head office in Northern Ireland the provisions of section 11 of the English Act shall not apply to an amalgamation or transfer of such company Under the English Companies Act, 1948, a scheme also requires the sanction of the Court For the purpose the Court insists on certain formalities being followed The first step is a summons to the Court asking the Court to convene the necessary meetings The summons seeks the directions of the Court for the convening and holding of the class meetings The Court does not itself consider at this point what classes of creditors or members should be made parties to the scheme That is for the company to decide in accordance with what the scheme purports to achieve The word 'class' "must be confined to those persons whose rights are not dissimilar as to make it impossible for them to consult together with a view to their common interest" [2] In general any person having a pecuniary claim against the company capable of estimation is a creditor [3] In a class meeting the class must have been fairly represented and the Court wants to be satisfied that those who attended the meeting are fair representative of the class and that the statutory majority did not coerce the minority in order to promote interest adverse to those of the class whom they purport to represent [4]

8 **Powers of the Controller** —The Controller has been invested with the powers under this section which the Courts are ordinarily empowered to do His powers under this section are judicial or at best quasi judicial and he must not exercise his powers arbitrarily but must do so judicially The principles which guide the Court to sanction a scheme must also guide the Controller in according his sanction to the scheme Apart from these prime powers the Controller has also been empowered with certain ancillary powers provided by proviso to sub-section (3) By this proviso he has been empowered to direct any particular insurer to substitute certified copies of the last balance-sheet and last report and abstract prepared in accordance with the provisions of

1 *Re Bryton Life* (1887) 56 L J Ch 988 see *Re Britannic* (1927) W N 225 (form of order) *Re Universal Life* (1901) 18 T L R 198 (at the date of the petition) *Re City of Glasgow Life* (1911) 2 Ch 577 (where the Court otherwise directs,

2 *Sovereign Life Assurance Co v Dodd* (1892) 2 Q B 573

3 *Re Albert Life Assurance Co* (1871) 6 Ch App 381

4 See *Re Dorman Long & Co* (1934) Ch 635 *Anand Prasad v Arjun Prasad* 19 A Pat 718

this Act or of the Indian Life Assurance Companies Act 1912, for the balance-sheet, report and abstract prepared as at the date at which the amalgamation or transfer if sanctioned is to take effect But in case of these substituted documents, the balance sheet is prepared at a date not more than twelve months and the actuarial report and abstract as at a date not more than five years, before the date on which the application for sanction is made to the Controller under this section The advantages of these substituted documents are that the insurers concerned need not prepare the balance sheet and the actuarial report and abstract anew once again for the purposes of applying to the Controller for sanction and for keeping them open for inspection at the various offices of the insurers mentioned above

Under the English Insurance Companies Act, 1958 copies of the actuarial or other reports upon which the agreement or deed of transfer or amalgamation is founded and a report of an independent actuary are to be transmitted to the policy holders Such actuarial report or abstract need not be of a definite date as in the Indian Act Under the English Act also the Court does not sanction the amalgamation or transfer of an insurance company carrying on life assurance business or industrial assurance business with another or to another if it appears to the Court that the life policy holders representing one tenth or more of the total amount assured in the company dissent therefrom

9 **Balance-sheet and reports, preparation of** —The balance sheets of each of the insurer's business proposed to be amalgamated or transferred, as the case may be, must be prepared in Form A set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, *i e*, just in the same way as provided in section 11 of the Act [1] The actuarial reports and abstracts also of these life insurance companies are to be prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned, *i e*, the reports and abstract are to be prepared just in the same way as provided in section 13 of the Act [2]

Sanction of amalgamation and transfer by Controller

36 (1) When any application such as is referred to in sub-section (3) of section 35 is made to the Controller, the Controller shall cause, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as he may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom he considers entitled to be heard, may, sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98

1 *See* Notes under S 11, pp 215—225, *supra* 2 *See* Notes under S 13 pp 236—244, *supra*

(*c*) any other reports on which the scheme of amalgamation or transfer was founded Such reports may be directors' report, auditors' report, policy-holders' report and the like

Sub-section (2) of section 11 of the English Insurance Companies Act, 1958, also requires that before any application is made to the Court for sanction of any arrangement for amalgamation and transfer, (*a*) notice of the intention to make the application shall be published in the Gazette, (*b*) a statement of the nature of the amalgamation or transfer, together with an abstract containing material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, and (*c*) a report by an independent actuary shall be, transmitted to each policy-holder of each company, and (*d*) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holders and shareholders at the offices of the companies for a period of fifteen days after the publication of the notice in the Gazette It has been held that failure to transmit the reports to the policy-holders will not cure the defect by subsequent consent of the policy-holders [1] But these requirements need not be complied with where the amalgamation and transfer relate to employers' liability insurance business So also where the company is registered or has its head office in Northern Ireland the provisions of section 11 of the English Act shall not apply to an amalgamation or transfer of such company Under the English Companies Act, 1948, a scheme also requires the sanction of the Court For the purpose the Court insists on certain formalities being followed The first step is a summons to the Court asking the Court to consent to the necessary *meetings* The summons seeks the directions of the Court for the convening and holding of the class meetings The Court does not itself consider at this point what classes of creditors or members should be made parties to the scheme That is for the company to decide in accordance with what the scheme purports to achieve The word 'class' "must be confined to those persons whose rights are not dissimilar as to make it impossible for them to consult together with a view to their common interest" [2] In general a person having a pecuniary claim against the company capable of estimation is a creditor [3] In a class meeting the class must have been fairly represented and the Court wants to be satisfied that those who attended the meeting are fair representative of the class and that the statutory majority did not coerce the minority in order to promote interest adverse to those of the class whom they purport to represent [4]

8 **Powers of the Controller** —The Controller has been invested with the powers under this section which the Courts are ordinarily empowered to do His powers under this section are judicial or at best quasi judicial and he must not exercise his powers arbitrarily but must do so judicially The principles which guide the Court to sanction a scheme must also guide the Controller in according his sanction to the scheme Apart from these primary powers the Controller has also been empowered with certain ancillary powers provided by proviso to sub-section (3) By this proviso he has been empowered to direct any particular insurer to substitute certified copies of the last balance-sheet and last report and abstract prepared in accordance with the provisions of

1 *Re Briton Life* (1882) 56 L J Ch 988 see *Re Britannic* (1927) W N 25 (form of order); *Re Universal Life* (1901) 18 T L R 198 (at the date of the petition) *Re City of Glasgow Life* (1911) 2 Ch 577 (where the Court otherwise directs,

2 *Sovereign Life Assurance Co v Dodd*, [1892] 2 Q B 573

3 *Re Albert Life Assurance Co*, (1871) 6 Ch App 381

4 See *Re Dorman Long & Co* [1934] Ch 635 *Anand Prasad v Ajaz Prasad*, 1931 P C

this Act or of the Indian Life Assurance Companies Act 1912, for the balance-sheet, report and abstract prepared as at the date at which the amalgamation or transfer if sanctioned is to take effect But in case of these substituted documents, the balance-sheet is prepared at a date not more than twelve months and the actuarial report and abstract as at a date not more than five years, before the date on which the application for sanction is made to the Controller under this section The advantages of these substituted documents are that the insurers concerned need not prepare the balance sheet and the actuarial report and abstract anew once again for the purposes of applying to the Controller for sanction and for keeping them open for inspection at the various offices of the insurers mentioned above

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9 **Balance-sheet and reports, preparation of** —The balance sheets of each of the insurer's business proposed to be amalgamated or transferred as the case may be, must be prepared in Form A set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, *i e*, just in the same way as provided in section 11 of the Act [1] The actuarial reports and abstracts also of these life insurance companies are to be prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned, *i e*, the reports and abstract are to be prepared just in the same way as provided in section 13 of the Act [2]

Sanction of amalgamation and transfer by Controller

36 (1) When any application such as is referred to in sub-section (3) of section 35 is made to the Controller, the Controller shall cause, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as he may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom he considers entitled to be heard, may, sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98

1 *See* Notes under S 11, pp 215—225, *supra* 2 *See* Notes under S 13 pp 236—244 *supra*

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8 **Powers of the Controller** —The Controller has been invested with the powers under this section which the Courts are ordinarily empowered to do His powers under this section are judicial or at best quasi judicial and he must not exercise his powers arbitrarily but must do so judicially The principles which guide the Court to sanction a scheme must also guide the Controller in according his sanction to the scheme Apart from these prime powers the Controller has also been empowered with certain ancillary powers provided by proviso to sub-section (3) By this proviso he has been empowered to direct any particular insurer to substitute certified copies of the last balance-sheet and last report and abstract prepared in accordance with the provisions of

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2 *Sovereign Life Assurance Co* v *Dodd* (1892) 2 Q B 573

3 *Re Albert Life Assurance Co* (1871) 6 Ch App 381

4 See *Re Dorman Long & Co* 1934 Ch 635 *Nand Prasad* v *Arjun Prasad*, 1959 Pat 233

this Act or of the Indian Life Assurance Companies Act 1912, for the balance-sheet, report and abstract prepared as at the date at which the amalgamation or transfer if sanctioned is to take effect But in case of these substituted documents, the balance-sheet is prepared at a date not more than twelve months and the actuarial report and abstract as at a date not more than five years, before the date on which the application for sanction is made to the Controller under this section The advantages of these substituted documents are that the insurers concerned need not prepare the balance sheet and the actuarial report and abstract anew once again for the purposes of applying to the Controller for sanction and for keeping them open for inspection at the various offices of the insurers mentioned above

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9 **Balance-sheet and reports, preparation of —**The balance sheets of each of the insurer's business proposed to be amalgamated or transferred, as the case may be, must be prepared in Form A set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, *i e*, just in the same way as provided in section 11 of the Act [1] The actuarial reports and abstracts also of these life insurance companies are to be prepared in conformity with the requirements of Part II of the Fourth and Fifth Schedules and in accordance with the regulations contained in Part I of the Schedule concerned *i e*, the reports and abstract are to be prepared just in the same way as provided in section 13 of the Act [2]

Sanction of amalgamation and transfer by Controller

36 (1) When any application such as is referred to in sub-section (3) of section 35 is made to the Controller, the Controller shall cause, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a life policy of any insurer concerned and shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as he may direct, and, after hearing the directors and such policy-holders as apply to be heard and any other persons whom he considers entitled to be heard, may, sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 7 or section 98

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1 *See* Notes under S 11, pp 215—225, *supra* 2. *See* Notes under S 13 pp 236—244 *supra*

Provided that—

(*a*) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the insurer carrying on the amalgamated business or the person to whom the business is transferred is completed,

(*b*) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (*a*), and

(*c*) while the deposit last mentioned in clause (*a*) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the insurer carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated on payment or part payment of any instalment of deposit subsequently due from him under section 7 or section 98

(2) If the arrangement involve a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all of the insurers concerned in the amalgamation, the Controller may sanction the arrangement, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as sanctioned by the Controller shall be valid and binding on all the parties concerned

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Section whether violative of Article 14 of the Constitution ?*
4 *Controller's duties regarding application for sanction sub-section (1)*
5 *Sanction of the scheme by the Controller sub-section (1)*
6 *Controller's power to make consequential orders, sub-section (1)*
7 *Disposal of statutory deposit proviso to sub-section (1)*
8 *Reduction of the amount of insurance and other contracts sub-section (2)*
9 *Transfer under the section, whether a winding-up ?*
10 *Transfer under the section, whether offends section 44 of the Act ?*
11 *Controller's power to sanction modified scheme*
12 *Applicability*

1 **Legislative changes**—(*a*) Section 36 is re-numbered as sub-section (1) and sections 36 (1) and 36 (2) were added by Act XLVII of 1950

(*b*) The word 'Controller" occurring in the section and in the marginal note was substituted by Act XLVII of 1950

(*c*) The word "India" occurring in the section was substituted by Act LXII of 1956

(*d*) The words and figures "and shall make under section 7 or section 98' occurring in sub-section (1) were added by Act XI of 1939

(*e*) Proviso to sub-section (1) was added by Act XIII of 1941

2 Object and scope—The object of this section is a very wholesome one as it empowers the Controller to hear any person affected by the proposed amalgamation or transfer, be he a policy-holder or a member or a creditor so that the chances of the majority in favour of the amalgamation or transfer being coerced by the minority or *vice versa* are eliminated The scheme requires a greater scrutiny where the majority is in a position to gain more from the scheme than other members by reason of their interests in some other capacity Lindley, M R in *Allen* v *Gold Reefs of West Africa, Ltd* [1] has laid down the principle in this regard thus "The power must, like all other powers, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities It must be exercised, not only in the manner required by law, but also *bona fide* for the benefit of the company as a whole, and it must not be exceeded These conditions are always implied, and are seldom, if ever, expressed" In case of a conflict of interest Bowen, L J, has enunciated the principle to be followed thus "the court, which has to see what is reasonable and just as regards the interests of the whole class, would certainly be very much influenced in its decisions, if it turned out that the majority was composed of persons who had not really the interest of that class at stake" [2]

Before sanctioning a scheme of amalgamation or a transfer, this section confers certain powers on the Controller Such powers, amongst others, are to cause notice to be served on the policy-holders to enable them to know about the scheme and to prefer their objections to the said scheme being sanctioned if they or any of them intends to do so Normally no such notice is to be issued unless the Controller for special reasons so directs The powers also include causing a statement of the nature and terms of the amalgamation or transfer to be published The object of such publication is to give wide publicity to the scheme or arrangement whereby the proposed amalgamation or transfer is going to be effected and every person interested in any of the companies or insurers may come forward and put forth his objections to the said amalgamation or transfer In short by taking resort to the provisions contained in sub-section (1) of this section, namely, by giving notice and by publication, every opportunity is given to all concerned to have their say in the matter and by this the Controller also has the privilege to consider all shades of opinions before he comes to his decision with regard to the scheme, that is, whether he will accord his sanction or not

Sub-section (1) of this section again confers powers upon the Controller to dispose of the amounts of deposits made under section 7 or section 98 of this Act The Controller has also been empowered under sub-section (2) of this section to sanction any arrangement which would involve a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all of the insurers concerned, in the proposed amalgamation or transfer

3 Section whether violative of Art 14 of the Constitution?—In *Shyamapada's* case it was contended that there were other insurance companies in the same insolvent position as the transferor company and that the policy-holders of the latter company alone were being made to suffer and hence the

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1 (1900) 1 Ch 656 at p 671
2 *Re Alabama New Orleans Texas and Pacific Junction Rly*, (1891) 1 Ch 213 at p 244

sanction under this section to the said company in the aforesaid circumstances is violative of Art 14 of the Constitution The Supreme Court has repelled the contention thus "It may be stated here that the transfer involved a condition affecting slightly adversely the rights of the policy-holders It does not seem to us however that any question of discrimination arises in the present case The transfer was sanctioned with the assent of the shareholders of the two companies concerned The sanction was given after the policy-holders of the transferor company were heard Again section 36 of the Insurance Act applies to all insurance companies where the companies in general meeting agree to a transfer No action under section 36 can be taken except on the initiative of the companies concerned It is done in the best interests of the policy-holders "[1]

4 **Controller's duties regarding application for sanction, sub section (1)** —Sub section (1) of this section defines the duties of the Controller when he receives an application for sanction of a scheme prepared and submitted in accordance with the provisions of sub section (3) of the foregoing section 35 His duties, with regard to the said application, are as follows

(*i*) he shall cause notice of the application to be sent to every life policy-holder resident in India of any insurer concerned,

(*ii*) he shall cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published, such publication shall be made in such manner and for such period as the Controller may direct in this regard Such publication may be made in newspaper or in the official Gazette as the Controller may direct The publication intended to be made is not the publication of the whole scheme *in extenso* but a summary of it indicating the nature and terms of the amalgamation or transfer, as the case may be,

(*iii*) lastly, he shall hear (*a*) the directors, (*b*) the policy holders who desire to be heard and make an application to the Controller in this regard, and (*c*) other persons whom the Controller considers entitled to be heard

5 **Sanction of the scheme by the Controller, sub-section (1)** — Sanctioning of the scheme by the Controller lies within his discretion It is not that the Controller should be a stamping officer in that he will give his accord to every scheme The Controller in sanctioning a scheme should exercise his discretion judicially One of the factors that the Controller should weigh in this connection is that he must be satisfied that no sufficient objection to the arrangement has been established and when he will be so satisfied he will exercise his discretion in favour of sanctioning the scheme The question 'whether sufficient objection to the arrangement has been established or not' depends entirely upon the Controller and it is his satisfaction in the matter which will be decisive in sanctioning or refusing to sanction the scheme Thus, where the Controller is satisfied that there is 'such an objection to it as that any reasonable man might say that he could not approve it' the Controller will refuse to sanction the scheme[2] In the matter of sanctioning the scheme the Controller must be guided by those considerations which the Court generally takes into account for the purpose The Controller should

1 *Shyamapada v Controller of Insurance* 1962 S C. 1355 at pp 1358-59

2. See *Re Alabama, New Orleans Texas and Pacific Junction Rly* (1891) 1 Ch 213 at p 244 *Re English Scottish and Australian Chartered Bank* (1893) 3 Ch 385

refuse to sanction a scheme which is inequitable,[1] but he will be slow to differ from the conclusion of the majority and will not himself judge upon the commercial merits of the scheme which is the function of the class itself.[2] Another important factor which the Controller should bear in mind that in exercising his discretion, whether or not to sanction a scheme, he should treat it as cardinal point that his function does not extend to usurping the view of the members or creditors.[3]

6 Controller's power to make consequential orders, sub-section (1) —When the Controller sanctions a scheme under this section he has also been empowered to make such consequential orders as are necessary to give effect to the arrangement These powers of making consequential orders are similar to the powers of the court conferred under section 394 of the Companies Act, 1956, whereby the court may make provision for such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out Similar powers have also been conferred on the court by section 208 (1) (*f*) of the English Companies Act These powers are general powers which are given incidental, consequential or supplemental to the scheme Thus the consequential orders which the Controller has been authorised to make must be to secure that the amalgamation or transfer shall be fully and effectively carried out As a consequential order the Controller has the power to direct disposal of the deposits made under section 7 or section 98 of the Act

7 Disposal of statutory deposit, proviso to sub section (1) — The Controller's power to order disposal of statutory deposits made in accordance with section 7 or section 98 of the Act is a consequential order which he must obviously pass if it is necessary to give effect to the arrangement which he sanctions under this section But clauses (*a*) to (*c*) of proviso to sub-section (1) defines the limits of the Controller's power in disposing of such deposit In the disposal of the statutory deposit, the following principles are to be followed

(*i*) Normally the deposit money or any part thereof under section 7 or section 98 of the Act, of either party to the amalgamation or transfer, as the case may be, is not returnable to any of them, but when after the scheme or arrangement after its sanction from the Controller is given effect to and the whole of the statutory deposit required to be made by the insurer who is to carry on the amalgamated business or by the transferee insurer is made, the said money becomes returnable,

(*ii*) but so much of the said deposit money shall be returnable as will no longer be required to complete the required deposit to be made by the insurer who is to carry on the amalgamated business or the transferee insurer, that is, only the balance of the deposit money which is not required to make up the total deposit required to be made under section 7 or section 98 by the amalgamated insurer or the transferee insurer, will only be returnable,

(*iii*) again, the accession resulting from the scheme or the arrangement should not be appropriated or applied towards the payment or

1 *Re Rick rds and Co* (1879) 11 Ch D 676
2. *Re London Chartered Bank of Australia* (1893) 3 Ch 540 *Re Empire Mining Co*, (1890) 44 Ch. D 402.
3 *Re Alabama New Orleans Texas and Pacific Junction Ry*, (1891) 1 Ch 213 at p 244 *see* also Note 6 under S 35 *supra see* also *Re Hearts of Oak etc Assurance Co*, (1914) 30 T L R 436

part-payment of any instalment of deposit subsequently becoming due from the amalgamated or transferee insurer, as the case may be, when the statutory deposit remains incomplete; that is, the amalgamated or transferee insurer, as the case may be, will have to pay the subsequent instalments as and when they will become due, otherwise than from the deposit of the insurer, amalgamated or merged or the transferor insurer [1]

Regarding the deposit under the Assurance Companies Act, 1909, it was held that the deposit could not be returned unless all the policy holders had released and abandoned their claims against the transferring company and the deposit [2] Where there were outstanding policies, the court refused to order payment out of the deposit but directed it be to carried over to a separate account of the purchasing company "in respect of the life insurance business of the vendor company" now dissolved [3] But the deposit could only be transferred subject to outstanding liabilities on policies issued in respect of employers' liability insurance [4] *In re United British Assurance*,[5] the court held that the sanction of the court to transfer and the fulfilment of all statutory requirements extinguished the liability of the transferor company and enabled the court to order payment out

8 **Reduction of the amount of insurance and other contracts, sub-section (2)** —It may so happen that the arrangement of the scheme for amalgamation or transfer may involve a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all the insurers concerned in the amalgamation In such a case, the Controller has been given the discretion to sanction the arrangement reducing the amount of such contracts but he may do so on terms and conditions which he specifies in that behalf and which he thinks proper in the circumstances of the case The reduction of contracts when sanctioned by the Controller shall be valid and binding on all the parties concerned

Under section 18 of the Assurance Companies Act, 1909, the court has been given the discretion to reduce the amount of the contracts upon terms and conditions imposed when it is proved that the company is unable to pay its debts In such a case a scheme is prepared and it is a substitute for a winding-up order But the provision is not intended to enable an insolvent company to continue to carry on business by relieving it of part of its present and future liabilities Such a scheme would not be entertained by the court [6] The power of approving a scheme under the above provision cannot be exercised so long as there is a winding-up order in existence, and, if, after the making of a winding-up order, the policy holders desire to present a scheme for the approval of the court, the winding up order ought to be discharged and meetings of policy-holders and shareholders summoned in order to ascertain their wishes [7] A scheme proceeding on a principle of inequality

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1 For incidents of deposits *see* Notes under S 7 *supra*

2 *Re Life and Health Assurance Association* (1910) 1 Ch 458 in the instant case the cases of *Ex parte Scottish Economic Life Insurance Society* (1890) 45 Ch D 220 and *Re Popular Life Assurance Co Ltd*, (1909) 1 Ch 80 were referred to

3 *Re City of Glasgow Life Assurance Co*, (1916) 2 Ch 557

4 *United London and Scottish Insurance Co v Omnium Insurance Corporation* (1915) 84 L J Ch. 777

5 (1929) 2 Ch 430

6 *Reconstruction case* (1872) Alb Arb Reilly 150 *Re Nelson & Co* (1905) 1 Ch 551 *Re Nelson & Co* (1905) 1 Ch 551 *Re Great Britain Mutual Life* (1880) 16 Ch D 351 *see* also *Great Britain Mutual etc Society* (1882) 20 Ch D 351 where power under S 18 of the Act had been exercised *see* also *Britain Medical and General Life Assurance Co* (1886) 54 L T 14

7 *Re Great Britain Mutual Life* (1880) 16 Ch D 351 *see* also *Great Britain Mutual etc Society* (1882) 20 Ch D 351 where power under S 18 of the Act had been exercised *see* also *Britain Medical and General Life Assurance Co* (1886) 54 L T 14

of reduction has been held to be not within the section [1] See also Notes under section 61 *infra* A scheme for reduction of contracts, when sanctioned by the court, is binding on the company and all policy-holders [2]

9 Transfer under the section whether a winding up —A contention was raised in *Shyamapada's* case that a transfer under this section is a virtual winding up and the latter could only be effected under the provisions of the Companies Act This contention was based on the decision of *Bisgood* s case [3] In this case a company was sought virtually to be wound up and its assets distributed in purported exercise of power to sell the undertaking and other cognate powers contained in its memorandum of association and this the court said could not be done as it would make the provisions for winding-up in the Companies Act ineffective The Supreme Court negatived the contention observing thus "What was done in this case was done under the provisions of the Insurance Act and not by way of carrying out a corporate object of the transferor company Now section 117 of the Insurance Act provides that nothing in that Act would affect the liability of an insurance company to comply with the provisions of the Indian Companies Act in matters not otherwise specifically provided for by it Section 36 of the Insurance Act read with section 35 of the Act, makes certain specific provisions which override the provisions of the Companies Act The objection based on *Bisgood's* case is ill founded "[4]

10 Transfer under the section whether offends section 44 of the Act —Section 44 of the Act does not say that an insurance company shall not be entitled lawfully to deal with its assets where the effect of such dealing might be that nothing is left out of which the agents can be paid their commission Again this section (section 36) does not say that a transfer shall not be sanctioned if the effect of it is to have no assets with the transferor company Reading the two sections together it is not possible to take the view that transfer cannot be sanctioned under this section if the result of that is to denude the transferor company of all its assets out of which an agent can be paid his commission Hence this section does not offend section 44 of the Act, *although an agent has been given certain rights against his employer* company to receive commission in respect of renewal premiums paid But his rights to receive commission are not in any way affected by the transfer although, it may be, that he cannot realise the amount due by enforcing that right because the transferor company has no assets left after the transfer out of which to pay the commission [5]

11 Controller's power to sanction modified scheme —Ordinarily, only the scheme of transfer under section 36 (1) in respect of which notice under section 35 (3) had been given could be sanctioned by the Controller and not a modified version of it But where the scheme and the resolution of the shareholders of the transferor company approving both provided for its modification and gave power to the directors to accept the modifications on behalf of the company, such modifications were pursuant to the terms of the

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1 *Nelson & Co , supra.*
2 *See* MacGillivray Insurance Law 5th Ed , Vol I pp 95-96 and Palmer s Company Precedents 17th Ed Vol I pp 1185-1186
3 *Bisgood v Henderson's Transvaal Estates Ltd.* (1908) 1 Ch 743
4 *Shyamapada v Controller of Insurance* 1962 S \ G. 1355 at p 1357 *supra*
5 *Shyamapada v Controller of Insurance supra*

scheme as approved by the shareholders of the transferor company and the scheme, in substance, was the scheme of which the notice had been given under section 35 (3) which was sanctioned [1]

12 **Applicability**—The section has been applied to Life Insurance Corporation of India

Statements required after amalgamation and transfer

37 Where an amalgamation takes place between any two or more insurers, or where any business of an insurer is transferred whether in accordance with a scheme confirmed by the Controller or otherwise, the insurer carrying on the amalgamated business or the person to whom the business is transferred, as the case may be, shall, within three months from the date of the completion of the amalgamation or transfer, furnish in duplicate to the Controller—

(*a*) a certified copy of the scheme, agreement or deed under which the amalgamation or transfer has been effected, and

(*b*) a declaration signed by every party concerned or in the case of a company by the chairman and the principal officer that to the best of their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer, and

(c) where the amalgamation or transfer has not been made in accordance with scheme sanctioned by the Controller under section 36—

(i) balance-sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer prepared in the form set forth in Part II of the First Schedule and in accordance with the regulations contained in Part I of that Schedule, and

(ii) certified copies of any other reports on which the scheme of amalgamation or transfer was founded

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1 *Shyamopada v Controller of Insurance* 1962 S C. 1355 at p 1357 the question whether the Controller could only sanction the scheme of which notice had been given under S 35 is left open see *'Re Dominion of Canada Freehold Estate and Timber Co Ltd* (1886) 55 L T 347 *Mahendra Kishore Datta v Bahamabasia Loan Co Ltd* 61 Cal 913 1934 Cal 816 and Palmer's Company Precedents, 16th Ed p 644 referred

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
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(i) *Declaration its form*
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4 *Analogous law under the English Act*
5 *Novation on amalgamation*
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(ii) *Novation by provision in policy*
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6 *Rights of policy holders*
Agent's interest in renewal premium
7 *Applicability*

1 Legislative changes—(*a*) The words "where any business of an insurer is transferred' were substituted for the words "where any business of one insurer is transferred to another" by Act XIII of 1941 , the words "the person to whom the business is transferred' were substituted for the words "the insurer to whom the business is transferred", the words 'furnish in duplicate to the Controller" were substituted for the words "furnish to the Central Government" and the words "a declaration signed by every party concerned" in clause (*b*) were substituted for the words a declaration signed by every insurer concerned" by the said Act XIII of 1941

(*b*) The word "Controller" occurring in the section was substituted by Act XLVII of 1950

(*c*) The clause (*c*) of the section was substituted by Act XIII of 1941

2 Object and scope—The object of the section is to keep the Controller informed when the insurer carries on the amalgamated business or does so after one business is transferred to him since after the scheme of amalgamation or transfer, as the case may be, is confirmed by the Controller The procedure by which such information can be given to the Controller has been laid down in this section The information is to be furnished to the Controller in both cases of amalgamation or transfer namely, where it is effected with the sanction of the Controller as provided in the foregoing section 36 and where no such sanction of the Controller is required, *e g* , in cases of amalgamation or transfer of other kind or class of insurance business except life insurance business

The provisions of the section, although similar to those made in sub-section (3) of section 394 of the Companies Act, 1956, do not partake of the nature contained therein The sub-section (3) of section 394 of that Act provides that within fourteen days after the making of an order under the said section every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration Under sub section (3) of section 206 of the English Companies Act 1948 it is provided that the order sanctioning the scheme is not effective until an office copy of the order has been delivered to the Registrar for registration The difference in the provisions between the two Acts of delivering the copy of the order of the Court sanctioning a scheme of amalgamation or transfer lies in this that under the English Act the order of amalgamation or transfer becomes effective only when the office copy of the order is delivered to the Registrar whereas under the Indian Act the order of the Court takes effect as soon as it is passed and is not kept in abeyance until the certified copy of the order is delivered to the Registrar However, under the Indian Act penalty has been provided for when default is made in delivering the certified copy within the period mentioned in the said sub-section (3) to the Registrar

Similar provisions are also to be found in section 12 of the English Insurance Companies Act 1958, whereby the combined company or the purchasing company, as the case may be, is required to deposit with the Board of Trade within ten days from the date of the completion of the amalgamation or transfer, documents mentioned in clauses (*a*) to (*d*) mentioned in the said section

3 **Documents to be furnished to the Controller** —The documents to be furnished to the Controller after an amalgamation has taken effect or a business of one is transferred to another are—

(*a*) a certified copy of the scheme, agreement or deed whereby the amalgamation or transfer has been effected, and

(*b*) a declaration signed by the parties thereto or in the case of a company, by the chairman and the principal officer

The documents above referred to relate to cases of amalgamation or transfer when it is done by the Controller's sanction or confirmation, but in cases where no such sanction or confirmation is required, the following further documents are to be furnished to the Controller—

(*c*) balance sheets in respect of the insurance business of each of the insurers concerned in such amalgamation or transfer prepared in accordance with the provisions of section 11 of the Act,

(*d*) certified copies of any other reports on which the scheme of amalgamation or transfer was founded

These reports may include actuarial report and abstract prepared in accordance with section 13 or section 16 of the Act

(*i*) *Declaration its form* —The declaration of the party concerned or the chairman and the principal officer as the case may be, should be in the following form

I do hereby declare that to the best of his/their belief every payment made or to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth and that no other payments beyond those set forth have been made or are to be made either in money, policies bonds valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer

(*ii*) *Time within which the documents are to be furnished* —The documents above referred to are to be furnished in duplicate to the Controller within three months from the date of completion of the amalgamation or transfer Under the English Insurance Companies Act 1958, documents required to be filed under section 12 are to be deposited within ten days from the date of the completion of the amalgamation or transfer [*See* also section 394 (3) where time-limit prescribed is 14 days after the making of the order by the Court]

4 **Analogous law under the English Act** —Section 12 of the Insurance Companies Act, 195', requires that the combined company or the purchasing company, as the case may be shall, within ten days from the date of the completion of amalgamation or transfer deposit with the Board of Trade—

(*a*) certified copies of statements of the assets and liabilities of the companies concerned in the amalgamation or transfer together with a statement of the nature and terms of the amalgamation or transfer,

(*b*) a certified copy of the agreement or deed under which the amalgamation or transfer is effected,

(*c*) certified copies of the actuarial or other reports upon which that agreement or deed is founded, and

(*d*) a declaration under the hand of the chairman of each company and the principal officer of each company that to the best of their belief every payment made or to be made to any person on account of the amalgamation or transfer is therein fully set out, and that no payments beyond those set out have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer

5 **Novation on amalgamation**—Amalgamation of insurance companies raises intricate questions of novation which means a tripartite arrangement between a debtor, contingent or otherwise, the creditor and a third party, whereby a debtor is released from his debt in consideration of his providing another person who will undertake to satisfy his debt Thus, where insurance company *A* transfers its business to company *B* *B* thereby undertakes to meet claims by *A*'s policy-holders This arrangement needs the consent of all three parties and unless they are all agreed, the right of action of the policy-holders will remain against *A* but when they are agreed the policy-holders lose their right of recourse against *A*

The law of novation is contained in section 62 of the Indian Contract Act which provides as follows if the parties to contract agree to substitute a new contract for it or to rescind or alter it, the original contract need not be performed In order to effect novation two things must concur there must be *animus novandi*, and the substitution of some other thing for that original obligation out of which the debt arose [1] Acceptance of *B* as full debtor instead of *A* constitutes a complete novation of the debt and necessarily operates as absolute release of *A* It cannot be held that novation merely amounts to a covenant not to sue the debtor [2] In order that one liability may be extinguished by being replaced by another by agreement, it is essential that the person in whom the correlative right resides should be a party to the agreement, or should, at all events show by some act of his own that he accedes to the substitution [3]

(*i*) *Evidence of novation*—The payment of a premium to a transferee company may be treated as evidence of novation and therefore it is a release and abandonment by the policy holder of his claim against the transferor company[4] but there are old cases where contrary view was held [5] There may be other instances evidencing novation thus

(*a*) acceptance of a bonus from the transferee company[6],

(*b*) bringing a claim against the transferee company[7],

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1 *Doe* v *Poole* (1848) 11 Q B 713

2 *Commercial Bank of Tasmania* v *Jones* (1893) App Cas 313

3 *British Home Assurance Corporation* v *Paterson* (1902) 2 Ch 404

4 *Re City of Glasgow Life* (1916) 2 Ch 557

5 See *Re Manchester and London Life* (1870) L. R 5 Ch 640 *Re Medical Invalid and General Life Griffith's case*, (1871) L R 6 Ch 374 *Re Times Life* (1870) L R 5 Ch 381 *Re Medical Life Spencer's case* (1871) L. R 6 Ch 362.

6 *Re United Ports Insurance* (1874) L. R 9 Ch 392 *Re International Life ex parte Blood* (1870) L R 9 Eq 316 *Re National Provincial Life* (1870) L R 9 Eq 306

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(e) sending the policy to the transferee company for indorsement or exchange [1]

During the Albert and European arbitrations, the question of novation on amalgamation or transfer of insurance companies frequently arose for decision One view was that a novation of a policy-holder's contract ought not to be lightly presumed but would require proof of the legal power to take over the policies of the transferor company, such power was known to the policy holder and an offer made either to accept a new policy or an indorsement of the transferee company and such offer was accepted [2] The other view was that any evidence was sufficient to establish a novation [3]

(ii) *Novation by provision in policy* —Novation may be made by inserting a term in the original contract of the insurance to the effect that the policy holder shall be bound to accept any subsequently substituted liability created by a valid amalgamation or transfer Such a term in the policy has been held to be quite lawful [4]

(iii) *Statutory novation* —The question as to whether the sanction of the Controller to an amalgamation or transfer under section 36 of the Act would operate by itself as a statutory novation of contract of the policy-holders with the company to whom the business is transferred is difficult to answer There is no direct Indian case on the point either way

Lord Parker in *United London and Scottish Insurance Co* v *Omnium Insurance Corporation*[5] in considering the same question while dealing with section 13 of the Assurance Companies Act 1909, corresponding to section 11 of the Insurance Companies Act, 1958, has observed thus "It appears to me that the Act does not, especially having regard to the prior Acts of 1870 and 1872, and the particular clauses therein contained, have the effect of creating what I may refer to as a statutory novation of contract of the policy-holders with the company to whom the business is transferred" The same view would appear to have been held in *Re City of Glasgow Life Assurance Co* [6] But in *Re Prudential Assurance Co*,[7] Simonds, J, has observed 'The effect of such a transfer as this, when it has been sanctioned by the Court, is to release the transferor company and to impose a new obligation on the transferee company"

6 Rights of policy-holders —On transfer or amalgamation the policy-holder is put to an election whether he shall repudiate the transfer and rely on the transferor company's original liability or shall affirm the transfer and rely on the substituted liability of the transferee company He cannot blow hot and cold at the same time His election must be made with reasonable promptness If he acquiesces in, or consents to, the merger or transfer, as where he pays premiums he has no right thereafter to obtain any relief against the transferor company but must look to the amalgamated or transferee company for whatever rights he has on his policy [8]

7 Applicability —The section has been made applicable to the Life Insurance Corporation of India

1 *Re European Assurance Miller's* case (1876) 3 Ch D 391 *Re Medical Life Griffith's* case *supra*
2 *Blundell's* case (1872) Eur Arb Reilly 84
3 *Herman's* case (1873) Eur Arb L T 129 *see* also Porter's Laws of Insurance chapter on Novation and Amalgamtion and Mac-Gillivray on Insurance Law pp 75-78
4 *Re European Assurance Dowie's* case (1876) 3 Ch. D 384; *Cocker's* case (1876) 3 Ch. D 1; *Hart's* case (1875) 1 Ch D. 307.
5 (1915) 84 L J Ch 777 at p 783
6 (1916) 2 Ch 557
7 (1939) 1 Ch 878 at p 884
8 *Watson* v *National Life and Trust Co*, 111 Cir Ct App (U S) 134; for agent's interest in renewal premiums, see *General American Life Insurance Co* v *Rosch* 65 Pac Rcf and Series 458 where it has been said that his right to renewal of premium could not be defeated by transfer or merger without the agent's consent.

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS

Assignment and transfer of insurance policies

38 (1) A transfer or assignment of a policy of life insurance, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument, signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but except where the transfer or assignment is in favour of the insurer shall not be operative as against an insurer and shall not confer upon the transferee or assignee, or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment and either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents have been delivered to the insurer

Provided that where the insurer maintains one or more places of business in India, such notice shall be delivered only at the place in India mentioned in the policy for the purpose or at his principal place of business in India

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy, and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered

(4) Upon the receipt of the notice referred to in sub-section (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates

(5) Subject to the terms and conditions of the transfer or assignment the insurer shall, from the date of the receipt of the notice referred to in sub-section (2), recognise the transferee assignee named in the notice as the only person entitled to

under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings

(6) Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of the survivor or survivors of a number of persons, shall be valid

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Making of transfer or assignment of life policy sub-section* (1)
(i) *Form of assignment or transfer*
(ii) *Stamp duty leviable*
(iii) *Assignment or transfer with out consideration*
(iv) *Assignment or transfer for nominal consideration*
(v) *Assignment or transfer for consideration*
(vi) *Assignment with defeasance clause*
(vii) *Partial assignment*
(viii) *Non assignable clause in a policy, effect of*
(ix) *Assignment made in foreign country conflict of law*
(x) *Void and/or voidable assignment*
(xi) *Assignment for illegal consideration*
5 *Notice of assignment or transfer its necessity and essentiality, sub-section* (2)
(i) *'Duly authorised agent'*
(ii) *Defects in the notice, waiver of*
6 *Place where the notice to be delivered, proviso, sub-section* (2)
(i) *Principal place of business, meaning of*
(ii) *Notice actual or constructive*
7 *"Shall regulate the priority of all claims', sub section* (3)
(i) *Equitable assignments what are?*
(ii) *Determination of priority*
8 *Duties of insurer, sub-section* (4)
(i) *Effect of acknowledgment*
(ii) *Interpleader*
(iii) *Payment of policy money into court*
9 *"Shall recognise the tranferee or assignee", sub-section* (5)
(i) *Assignee stands in the shoes of assignor*
(ii) *Loss caused by assured's own wrongdoing—assignee cannot recover*
10 *Section 38 has no retrospective operation, sub-section* (6)
11 *Conditional assignment, its validity, sub-section* (7)
12 *Assignment of fire insurance policy*
13 *Assignment of marine insurance policy*

1 **Legislative changes**—(*a*) The words "except where in favour of the insurer" and the words "and either the said endorsement authorised agents' occurring in sub-section (2) were inserted by Act XI of 1939, the word "and" and the words "have been delivered" occurring in the said sub-section were substituted for the words "together with" and "has been delivered" respectively by Act XIII of 1941, and the words "at his principal place of business in British India by or on behalf of the transferor or transferee" occurring at the end of the sub-section were omitted by Act XI of 1939

(*b*) The proviso to sub-section (2) was added by Act XI of 1939 and the word "India" occurring in the said proviso was substituted by Act LXII of 1956

(*c*) The words, brackets and figure "subject to the terms and conditions in sub-section (2)" occurring in sub-section (5) were substituted for "from the date of the receipt of notice referred to in sub section (2), the insurer shall" by Act XI of 1939

(*d*) Sub-section (6) was substituted by Act XI of 1939

(*e*) The words "lifetime of the person whose life is insured" occurring in sub-section (7) were substituted for the words "life of the policy-holder" by Act XI of 1939

2 **Applicability**—The provisions of this section are applicable to a transfer or assignment of a policy of life insurance and do not apply to a transfer or assignment of a policy of fire or marine or miscellaneous insurance Transfers or assignments of the latter classes of policies are to be governed by section 130, Transfer of Property Act (IV of 1882) The section shall apply to the Life Insurance Corporation of India

3 **Object and scope**—The object of the section is to lay down the procedure to be followed when a life insurance policy is to be transferred or assigned to any person by the insured The section being divided into seven sub-sections presents a complete code on assignment and transfer of life insurance policies Hence since the enactment of this section in the present Act all assignments or transfers of life insurance policies are to be governed by this section and not by the provisions of section 130 of the Transfer of Property Act Previous to this Act life insurance policies were transferred like all other actionable claims under section 130 of the Transfer of Property Act

In England, before the passing of the Policies of Assurance Act, 1867 (30 and 31 Vict, c 144) an assignment of a policy of life insurance was not recognised at law The contract of insurance being with the insured and the insurer no third party could give a valid discharge at law of the same Even if a policy was assigned the assignee could not bring any action at law against the insurer but he had to sue in the name of the assignor till equity came to his relief when he could sue in his own name making the assignor a necessary party But the Judicature Act, 1873 (36 and 37 Vict, c 66) permitted assignment of legal chose in-action and for the validity of such assignment it ought to be an absolute assignment in writing and notice of which in writing was given to the debtor The Law of Property Act, 1925 (15 Geo 5, c 20) by re-enacting the same provisions as in the Judicature Act 1873, provided thus "any absolute assignment in writing under the hand of assignor (not purporting to be by way of charge only) of any debt or legal chose in action, of which express notice in writing shall have been to the debtor, trustee or other person from whom the assignor would entitled to claim such debt or chose in action shall be, and be deemed

been, effectual in law (subject to all equities which would have been entitled to priority over the rights of the assignees if this Act had not been passed) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same and the power to give a good discharge for the same, without the concurrence of the assignor"

The chose in action of English law is synonymous with the actionable claim of the Indian law The actionable claim has been defined to be a claim to any debt, other than a debt secured by a mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the provision either actual or constructive, of the claimant which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [1]

The transfer of an actionable claim, with or without consideration, is effected by the execution of an instrument in writing signed by the transferor or his duly authorised agent and the same becomes complete and effectual upon the execution of instrument of transfer and all the rights and remedies of the transferor vests in the transferee whether any notice of such transfer is given or not except in cases of transfer of a marine or fire insurance policy [2] Thus, to be a valid assignment under the Transfer of Property Act, it must be effected by means of an instrument in writing duly signed by the assignor or his authorised agent Where the claim of the claimant was based not on written deed of assignment but on a deposit of the policy creating a charge the Privy Council observed thus 'In the present case the respondent bases his claims on a deposit of the policy, and not under a written transfer and claims that this creates a charge on the policy The section specifically enacts that such a proceeding shall not have such effect and that such a charge can only be created by a written document It follows that the respondent acquired no right whatsoever to the policy or its proceeds by reason of the deposit' [3]

Since the enactment of section 38 of the Life Insurance Act all assignments and transfers of life insurance policies have to be governed by the provisions of that section and not by section 130 of the Transfer of Property Act Under this section assignment and transfer whether with or without consideration, of a policy of life insurance can be effected by an endorsement upon the policy itself or by a separate instrument signed by the transferor or the assignor, as the case may be, or his duly authorised agent and the instrument is also to be attested by at least one witness To make the transfer or assignment effective notice of such transfer or assignment must be given to the insurer as provided in this section Under the Policies of Assurance Act, 1867 similar provisions were made, namely no assignment of policy of life insurance would confer on the assignee any right to sue for the amount of such policy or the moneys assured or secured thereby until a written notice of the date and purport of such assignment was given to the Assurance Company [4] Moreover assignments could be made either by endorsement on the policy or by a separate instrument [5] and this endorsement or instrument ought to bear requisite stamp [6]

1 *See* S 3 Transfer of Property Act

2 *See* S 130 of the Transfer of Property Act *see Rajnarain Bose* v *Universal Life Assurance Co* 7 Cal 594 which was decided before the enactment of the Transfer of Property Act 1882 and hence it was held therein that the assignee had to sue the debtor not in his name but in the name of the assignor

3 *Mulraj Khe au* v *Viswanath Prasuram* 40 I A 24 37 Bom 198 *see* also *Shankar Vishanath* v *Umabai* 37 Bom 471 where it has been said that the assured could divest himself of his beneficial interest under the policy only by an assignment in writing as provided by S 130 Transfer of Property Act

4 *See* S 3 of the Transfer of Property Act

5 *See* S 5 of the Transfer of Property Act

6 *Ibid*

This section also saves the rights and remedies of an assignee or transferee or of a policy of insurance under an assignment or transfer effected prior to the commencement of the Insurance Act, 1938, *i e*, prior to 1st July, 1939, when the Act was brought into force This section also validates an assignment in favour of a person made with the condition that it will be inoperative or that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured even if there be any law or custom having the force of law to the contrary, that is, it makes conditional assignment possible and permissible

4 **Making of transfer or assignment of life policy, sub section** (1) —Sub section (1) of this section makes specific provisions for transfer and assignment of a policy of life insurance Such transfer or assignment, as the case may be, must be effected by either of the two methods, namely (i) by an endorsement on the policy itself, or (ii) by a separate instrument But in both the cases the following formalities are to be observed, namely, (i) the endorsement or the instrument must be signed by the transferor or by the assignor or by his duly authorised agent, (ii) the endorsement or the instrument must be attested by at least one witness, and (iii) the endorsement or transfer must specifically set forth the fact of transfer or assignment Assignment or transfer can be with consideration or without any such consideration

A policy of life insurance is a security for money payable at a date uncertain, but calculable It has to be construed as a contract to pay a certain sum in a certain event depending on the duration of human life Such a policy always forms part of the estate of the assured and may be dealt with at his absolute discretion, such as, sale, charge, settlement or bequest or made the subject of *donatio mortis causa* Under the general law, an assignment is understood as a transfer by an individual of his right or interest in the property to another resting upon a contract between them That being the case if a policy is assigned it operates so as to completely divest the assignor of any right under it, for the essence of assignment is complete divesting The assignee is, therefore, clothed with all the rights and liabilities which the insured occupied before the transfer , that is, there is a substitution for the assured so far as the benefits are concerned by the assigned [1] Hence after assignment the policy amount does not form part of the assets of the assured on his death in the hands of the assignee and is not liable to attachment in execution of a decree against the assured [2]

(i) *Form of assignment or transfer* —To effect an assignment no particular form of words is necessary Even the use of the word "assign" is not necessary Any word indicating assignment as for example, "transfer", "convey" or 'make over" will suffice The form set forth in the Schedule to the Policies of the Assurance Act, 1867, reproduced may serve as a model form

"I, *AB* of, etc , in consideration of, etc , do hereby assign unto *CD* of, etc , his Executors, Administrators and Assigns, the [within] policy of Assurance granted, etc [here describe the policy] In witness etc "

(ii) *Stamp duty leviable* —Under the Stamp Act of 1869, only transfers by endorsement of policies of marine or fire insurance were exempt from stamp duty but under the Act of 1899, a transfer by endorsement of a life

1 *Mudaliar D M* v *Indian Insurance and Banking Corporation* (1936) 2 M L J 476 (Notes) 170 *N L Ref*
69 M L W 724 1957 Mad 115 *Ambikam* I L R (1939)
1 M L J 261 49 M
2. *Shardadevi* v *W P Varma* 1951 N L J Mad 411

policy is also made exempt from stamp duty *In re Thomson's Policy*[1] it was held that when the assignment was by way of collateral security and without consideration, the endorsement was not chargeable with *ad valorem* duty as a conveyance but only with a fixed duty of Re 1 as a collateral document under Schedule II of the Stamp Act The case was decided under the Act of 1869

Where the assignment or transfer is made by means of an instrument whether with or without consideration the stamp duty payable is, if the duty on the policy to be assigned does not exceed Rs 5, the duty with which the policy of insurance is chargeable, and in any other case the duty payable is Rs 5[2] But the duty of Rs 5 is enhanced to Rs 10 in Bengal, Bombay and C P and Berar and Rs 7-8 in Orissa and Bihar and Rs 9 6 in U P[3]

When a bank lends money on the security of an assignment it will be able to recover no more than that amount from the insurers which is covered by the stamp duty paid, *i e*, any excess amount paid which is not covered by the requisite duty is not recoverable unless the assignment has been stamped with a further duty[4] An assignment of a life policy by way of security was chargeable with stamp duty as a mortgage of property[5] Where actual consideration given for the transfer was more than that covered by the stamp the insurer should refuse to proceed until the instrument is properly stamped so as to cover the actual consideration[6] Again where transaction is primarily a sale it will be chargeable as such, even although it may form part of what is called a family arrangement[7]

The U P Act XVII of 1948 provides that if by any one instrument the interest secured by several policies of insurance is transferred the duty payable in respect of such instrument shall be the aggregate of the duties which would have been payable if separate instruments of transfer were executed in respect of each such policy of insurance

(iii) *Assignment or transfer without consideration*—When an assignment or transfer is said to be without consideration it ordinarily means that there is no pecuniary consideration for the transaction Thus, when an assignment or transfer is made by way of gift it is without consideration although assignment or transfer may be expressed to be in consideration of natural love and affection and such a consideration is sometimes called a good or meritorious consideration

Where a person has assigned insurance policy and the assignee has stated on oath that the policies were handed over to her and she accepted them, the gift was complete as soon as these conditions were complied with The mere fact that the money was to be realised in future is not enough to make it a gift *in futuro* Valid gifts can be made of actionable claims[8]

A voluntary promise *de futuro* to assign a chose in action, such as an insurance policy is not enforceable against the promisor or his representatives', but if written words have been used purporting to assign the right *de presenti* there is a complete assignment which is enforceable although

1 3 Cal 317 (S B)
2 *See* Schedule I Art 62 (*c*) of the Stamp Act (II of 1899)
3 *See* S 7 (24) of Bengal Act XII of 1935 Bombay Act II of 1932 C P and Berar Act VI of 1938 Orissa Act VI of 1943 Bihar Act VI of 1937 U P Act XVII of 1948 In Punjab the stamp duty payable is Rs 7-8 vide Punjab Act VIII of 1922.
4 *In Waterhouse's Policy* (1937) 1 Ch 415
5 *Caldwell v Dawson* (1850) 5 Exch 1 but *see Blandy v Herbert* (1829) 9 B & C 396
6 *Maynard v Consolidated Fruit Colliteries*, (1903) 2 K B 121
7 *Bastel (Marquis) v Inland Revenue* (1901) 2 K B 330
8 *Sadiq Ali v Zahida Begam* I L R (1939) All 957 1939 A L J 1103 1939 All 744
9 *Re McArdle* (1951) Ch 669

voluntary [1] But where the purported assignment did not contain any present words of gift it was an incomplete gift [2] As a general rule oral words purporting to assign the policy *de presenti* cannot be construed as oral gift of policy so as to entitle the assignee to sue at law But this rule has two exceptions, namely, (i) where the donee is afterwards appointed executor of the donor [3], (ii) where the gift is a *donatio mortis causa* and the policy is delivered to the donee [4] But when the donor was contemplating suicide, a *donatio mortis causa* would be invalid except where he made in contemplation of death as the result of sickness but subsequently committed suicide not contemplated by him at the date of the gift [5]

(iv) *Assignment or transfer for nominal consideration* —It may sometimes happen that the consideration mentioned in the transfer or assignment is too small whereas the value of the policy may be very substantial In such cases, assignment or transfer is said to be for nominal consideration, i *e* , the nominal consideration does not represent the true consideration and it is inserted only to avoid any question being raised in future that the assignment or transfer is without consideration and as such void in law Such cases of inserting nominal consideration arise in case o settlement or assignment or transfer to trustees by way of declaration of trust [6]

(v) *Assignment or transfer with consideration* —Assignment or transfer of life insurance when made with consideration may be either sale or mortgage Where the policy is sold, the consideration is the payment of money, and the same is also the case with regard to mortgage An assignment or transfer of policy cannot be made by a bill of sale [7]

A mortgage of a policy is an assignment of the assured's right to recover the policy moneys but only by way of security to the assignee for payment of a debt due to him from the assignor The most formal way of creating a mortgage is by deed of mortgage assigning the policy in security with the usual conditions for redemption and powers of sale A policy may also be mortgaged by a simple deposit of the policy without notice, without writing without even word of mouth passing between the depositor and depositee [8] The deposit of a policy cannot always be construed as creating a charge It may be deposited (i) for safe custody, (ii) for pledging same as a piece of paper without giving him any right to receive the policy moneys [9] (iii) for drawing up a formal mortgage [10] But a debtor depositing policy with his creditor would *prima facie* show that former intended to charge the policy moneys [11]

The law of mortgage in India is contained in section 58 of the Transfer of Property Act (IV of 1882) which says that a mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future

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1 *Re King* (1879) 14 Ch D 179 , *Re Griffin* (1899) 1 Ch 408

2 *Re Williams* (1917) 1 Ch 1

3 *Re James* (1935) Ch 449 *Re Pirk* (1912) 2 Ch 528 *Re Stewart* (1908) 2 Ch 251

4 *Re Weston* (1902) 1 Ch 680 *Re Dillon* (1890) 44 Ch D 76 *see* also *Birch* v *Treasury Solicitor* (1951) Ch 298 for the validity of *donatio mortis causa* see *Re Craven's Estate* (1937) 3 All E R 33

5 *Mills* v *Sheilds and Kelly* (1948) Ir R 367

6 For Settlor s covenant to keep up policy see *Re Deane* (1889) 42 Ch D 9 *Sellesinger* v *Mostyn* (1932) 1 K B 349 for trustees power to sell or surrender the policy, *see Hill* v *Tenney* (1857) 23 Beav 16 for settlement being made on an illegal consideration see *Ayerst* v *Jenkins* (1873) L R 16 Eq 282 *Phillips* v *Probyn* (1899) 1 Ch 811

7 *Swanley Coal Co* v *Denton* (1906) 2 K B 873

8 McGillivray on Insurance Law 5th Ed , Vol 2 p 619 ; *see* also *Shaw* v *Foster*, (1872) L R 5 H L 321

9 *Carter* v *Wake* (1877) 4 Ch D 605

10 *Norris* v *Wilkinson* (1806) 12 Ve

11 *Harrold* v *Plenty* (1901) 2 Ch

debt or the performance of an engagement which may give rise to a pecuniary liability The money under a policy of insurance is not an immovable property and hence mortgage of a policy as contemplated under section 58 of the said Act is not permissible but a mortgage of movable property has been held to be valid and a decree can be passed in enforcement of the mortgage The mortgagee would have the right of sale just as a mortgagee of immovable property has [1] In *Vajeram* v *Purshotumdas*,[2] it was held that a policy of insurance could be mortgaged just like any other property and could be made available as security by mere deposit But equitable mortgage by deposit of policy is not possible [3]

Similarly, although a charge in respect of a policy cannot be created under section 100 of the Transfer of Property Act but a charge on movables has been recognised at law and it need not even be in writing but for creating a charge on movables the property must be specifically indicated [4]

(*vi*) *Assignment with defeasance clause* —An assignment of an endowment policy with a condition that the policy would revert to the assignor if the assignee predeceased him before the endowment period or if the assignor survived till the maturity of the policy creates an immediate vested interest in the assignee Such an assignment is not revocable [5] Where *A* assigned his policy in favour of his wife *B* by an endorsement on the policy itself The endorsement also provided that in the event of *B* predeceasing *A* or in the event of *A* surviving the date on which the said policy would mature, the benefit of the policy and the right to receive moneys thereunder should revert to *A* as if the assignment has not been made, it has been held that the endorsement operated as a present transfer in favour of *B*, though provision had also been made for a reverter to *A* in certain contingencies [6]

An assignment cannot be said to be an absolute assignment unless it expresses a final and settled intention to transfer the policy to the assignee then and there [7] An assignment subject to a condition for defeasance and the revesting of the policy money in the assignor on the happening of a future event or an assignment subject to a contingency so that it does not take effect until the happening of a future event is not within the Act although either may constitute a valid equitable assignment of the policy The insurer must not be placed in a position of uncertainty as to the person to whom he will pay the policy money [8]

(*vii*) *Partial assignment* —The policy of life insurance being an actionable claim should not be made divisible so as to permit the legal right to sue for part of the debt assigned to *A* and the other part to the assignor himself or assigned

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1 See *Waghela Rajsanji* v *Shekh Masludin* 14 I A 89 11 Bom 551 *Mehrban Khan* v *Makhana* 57 I A 168 11 Lah 251 1930 P C 142 *Shrish Ch Roy* v *Mangri Bewa* 9 C W N 14 *Haripada* v *Anath nath* 1918 Cal 165 *Co-operative Hindusthan Bank Ltd* v *Surendra Nath* 59 Cal 667 1932 Cal 524

2 7 Bom L R 138

3 *Mulraj Khatau* v *Viswanath Pranuram* 40 I A 24 *supra*

4 See *Misri Lal* v *Mazhar Hossain* 13 Cal 262 *H V Low & Co Ltd* v *Pulinbihari*, 55 Cal. 1372 1933 Cal 154

5 *Bai Lakshmi* v *Jasvantlal*, 49 Bom L R 183 1947 Bom 369

6 *A L Kottilamma* v *T M V Nambiar* 1 L R (1939) Mad 415 *supra* *see* also *Shava Das Govind Roo* v *Savitri Bai* 31 S L R 98 1937 Sind 181 but *see* *Lalithambal Ammal* v *Guardian of India Insurance Co Ltd* 1937 Mad 645, *see* also p 69 *supra*

7 *Re Williams* (1917) 1 Ch 1

8 *Durham Bros* v *Robertson* (1898) 1 Q B 765 *see* also observation of Chitty L J in (1898) 1 Q B 765 Mc Gillivray on Insurance Law at p 575 *see* also Note 10 *post*

to *B* In *Re Steel Wing Co*,[1] it was held that a partial assignment was not within the statute but the assignee would be a creditor of the debtor in equity[2] Greer, L J, in *Williams* v *Atlantic*[3] observed thus "It seems to me quite clear that the assignee of part of a debt is merely an equitable assignee and at any rate, unless the equitable assignment be accompanied by a power to give a discharge, it is impossible for the assignee to succeed unless he sues in the name of the assignor" The principle in *Re Steel Wing Co* (*supra*) has been followed in India in *Rajamier* v *Subramaniam*[4]

(viii) *Non-assignable clause in a policy—effect of*—The insurer cannot disregard notices of equitable assignment even if there is 'non-assignable' clause in the policy[5] But in *Re Tussaud*[6] it was held that an assignee could not sue the insurer when a life policy was expressed to be "not assignable in any case whatever" But in the same case Cotton, L J, observed that a Court would be slow to construe such a condition in a way so as to prevent an assignee's interest from being enforceable in equity or to affect the interest of a beneficiary under a declaration of trust[7] Policies on lives of parents under section 2 of the English Industrial Assurance and Friendly Societies Act, 1948, are not assignable

(ix) *Assignment made in foreign country, conflict of law*—A conflict of law arises where a policy of insurance has to be dealt with in a country other than the country where the contract of insurance is governed Such question, namely, whether the law of the country where the policy is dealt with or the law of the country where the contract of insurance is governed should be the criterion, has to be determined according to the rules of private international law

As a general rule the validity of the discharge of a contract depends upon the proper law of contract but the validity of a statutory transfer of the right to receive money under a contract, whether due or become due, is governed by the *lex situs* of the debt[8]

Where *A* domiciled in the Cape of Good Hope effects a policy in England and subsequently assigns it to his wife *B* Under the law of the Cape of Good Hope a husband cannot assign a policy to his wife, it was held that the assignment was a nullity[9] Again, where *A*, a husband domiciled in Scotland, effected in England a policy on his wife under the Married Women's Property Act, 1882 The wife mortgaged her interest in the policy to a Scottish Bank Under English Law she could validly mortgage her interest but under the Law of Scotland she could not do so, it was held, that her capacity to mortgage must be determined by the Law of Scotland and hence the mortgage was invalid[10]

Where a policy-holder domiciled abroad becomes lunatic, the person to deal with his affairs is the proper officer appointed by the Court of the country of domicile[11]

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1 (1921) 1 Ch 349
2 *See* also *Forster* v *Baker* (1910) 2 K B 630 *Skipper and Tucker* v *Holloway* (1910) 2 K B 636
3 (1933) 1 K B 81
4 1928 Mad 1201
5 Bunyon *Life Insurance* 5th Ed p 289
6 (1888) 40 Ch D 5
7 *See* pp 9 10 of the Report cited *supra*
8 Dicey *Conflict of Law* 7th Ed Rule 155, *see* also *Re United Railways of Havana and Regla Warehouses* (1960) Ch 52
9 *Lee* v *Abdy* (1886) 17 Q B D 309 *see* also *North Western Bank* v *Poynter*, (1895) A C 56
10 *Pender* v *Commercial Bank of Scotland, Ltd* (1910) S L T 306
11 See *Didisheim* v *London and Westminster Bank* (1900) 2 Ch 15, *Polegrin* v *C Co* (1915) 1 Ch 696

"In the case of an English policy issued by a company with its principal office situate in England, an assignment, say, in Scotland (which is a foreign country for purposes of private international law) must as between assignor and assignee be *prima facie* determined according to Scots Law, and if the assignee takes a good title by Scots Law, that must prevail against the assured and his personal representatives or general creditors, whether in Scotland or England If the assured has assigned his policy twice over in Scotland to domiciled Scotsmen, a competition between such assignees would *prima facie* be decided according to Scots Law If the assured has assigned his policy first in Scotland and then in England, the validity of each assignment would *prima facie* be decided according to the law of the country where it was made, but a contest between the two assignees on a question of priority would be determined according to English law In any claim made against the company, the right of any assignee to sue at law in his own name, and so his ability to give a legal discharge, would be determined according to English Law The company, however, would not on that account be entitled to disregard claims made by an assignee holding a good title by Scots Law in a case where Scots Law prevailed between the claimants Such title would be good in equity in an English Court, and the company could not pay the person entitled to sue at law and disregard the equitable title "[1]

(*x*) *Void and/or voidable assignments* —An assignment or agreement to assign a policy of insurance may be avoided on the same grounds upon which a contract can be rescinded under the law Thus it may be rescinded on the ground of (*a*) misrepresentation , not only misrepresentation of material fact nor fraudulent misrepresentation but innocent misrepresentation may be ground for rescission[2] or (*b*) mutual mistake or *error in essentialibus*[3] , or (*c*) fraud of one party[4] , or (*d*) duress and undue influence [5]

The effect of rescission of assignment on the ground of misrepresentation, fraud, mistake, coercion or undue influence is that a person claiming through the assignee can have no better title than the assignee himself even though he is the purchaser for value and without notice of the defect in the original assignment [6]

(*xi*) *Assignment for illegal consideration* —As a general rule a contract is illegal if it be in contravention of a statute or opposed to its general policy and intent or is forbidden by law or legislative enactments A contract is also illegal where its consideration or object is immoral or is opposed to public policy So also every agreement in restraint of the marriage of any person, other than a

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1 MacGillivray on Insurance Law 5th Ed Vol 2 pp 595-596

2 See *Rosser v Trust* (1877) 37 L T 426 *see* also S 18 of the Indian Contract Act (X of 1872) *Mohan Lall v Ganga Mills* 4 C W N 369 *Pertab Chander v Mohendra Nath*, 17 Cal 291 (P C)

3 *Scott v Coulson* (1903) 2 Ch 249 *Cooper v Phibbs* (1867) 2 H L C 149 *Coulturier v Hastie* (1856) 5 H L C 673 *Nursing Das v Chuttoo* 50 Cal 615 *Lakshmana Prasad and Sons v Achutan* 1952 Mad 779 *H E Meany v E C Eyre Walker* 1947 All. 372 , *see* also S 20 of the Indian Contract Act

4 *Barber v Morris* (1831) 1 Mood and Rob 62 ; *Reese River Silver Mining Co v Smith* L R 4 H L. 64 ; *Abdul Hossein v Turner* 11 Bom 620 (P C) *Mahadi v Wilson* 21 All 209 (P C) *see* also S 17 of the Indian Contract Act

5 *See* Leake on Contracts 8th Ed pp 292 *et* 295 *Baudains v Richardson* (1906) A C 169 *Mackenzie v Royal Bank of Canada* (1934) A C 468 *Howes v Bishop* (1909) 2 K B 390 *Bajrangilal v Sitaram* 1949 Cal 457 *Amirajo v Sethamma* 41 Mad. 93 *Kernal Distillery v Ladli Parshad* 1953 Punj 190 *Raghunath Prasad v Sarju Prasad* 3 Pat 279 (P C) *Sir Fazalali v Ahmad Kamil* 1944 All 104 *Lala Kundan v Mst Musharraf* 63 I A 326 *see* also Ss 15 and 16 of the Indian Contract Act

6 *Lawrence v Galsworthy* (1857) 3 Jur (N S) 1049

minor, is void [1] Thus, where a gift is made that the donee does not marry, the condition will not be enforced, and the donee takes the gift without the condition [2] So also where a settlement is made in consideration of future illicit intercourse it is void for illegality [3] Likewise, an assignment by way of mortgage to secure payment of a sum of money lost on betting transactions is void as it is for an illegal consideration [4] *Ex dolo malo non oritur actio* is a maxim founded on general principles of policy, and no Court lends its aid to a person who bases his cause of action on an immoral act Though the word "immoral" is a very comprehensive word containing every aspect of personal conduct deviating from the standard norms of life, judicial decisions have confined the operation of the doctrine to cases of sexual morality [5]

5 **Notice of assignment or transfer, its necessity and essentiality, sub section** (2) —Sub-section (2) of this section requires that notice in writing of the transfer or assignment should be delivered to the insurer and such notice must be accompanied either by the original endorsement made on the policy when the transfer or assignment is made by endorsement or the instrument itself if it is done by means of an instrument but when the original is not sent, copies thereof, as the case may be, may be sent along with the said notice but such copies must be certified by both transferor and transferee to be true copies of the originals and when the assignment or transfer is signed by the duly authorised agent of the transferor or assignor such certificate can be given by him but when neither the transferor nor the transferee certifies the copies the same may also be certified by their duly authorised agents

The necessity of delivering the notice to the insurer in the manner aforesaid is imperative and essential as without such notice the transfer or assignment shall not be complete and effectual even though the execution of endorsement on the policy or the instrument duly attested as required to be made in accordance with the provisions of sub-section (1) of this section is done The assignment or transfer, as the case may be, becomes complete and effective only when the notice as aforesaid is delivered to the insurer, until then the assignment or transfer remains as if no assignment or transfer has been made even in spite of the instrument or the endorsement

But an exception has also been made in the said sub-section and such exception applies when the assignment or transfer, as the case may be, is made in favour of the insurer himself Thus when an assignment or transfer of a policy is made to the insurer himself, the assignment or transfer will be complete and effective as soon as the assignment or transfer is made by endorsement or instrument in accordance with the provisions of sub-section (1) and the provisions contained in sub-section (2) need not at all be complied with But the insurer, in whose favour the assignment or transfer is made, must be the insurer who has issued the policy and not any other insurer as in the latter case the notice together with the accompaniments as required under sub-section (2) must be served on him to complete the assignment or transfer and to make the same effectual

If the assured under an own-life policy has assigned it in his lifetime, the assignee may complete his title by giving notice to the office after the death of the assured and after the sum assured has become payable Such a notice

1 *See* S 23—26 of the Indian Contract Act
2 *Re Whiting's Settlement* (1905) 1 Ch 96
3 *Benyon* v *Nettlefold* (1850) 3 Mac & G 94
4 *William Hill (Park Lane) Ltd* v (1951) 1 All E R 1013
5 *Gherulal Parekh* v *Mahadeo Das* 281

is a good notice under the Policies of Assurance Act, 1867 [1] It is usual and convenient practice to require the acknowledgment to be given on a duplicate of the notice sent to the company [2]

Previous to this Act, policies of life insurance were being transferred according to the provisions of section 130 of the Transfer of Property Act (IV of 1882) It is provided in that section that a transfer of actionable claim shall be complete and effectual upon the execution of the instrument of transfer whether any notice of the transfer as required to be given under section 131 of the said Act is given or not But an exception has been added in the said section 130 wherein it is provided that nothing in that section affects the provisions of section 38 of the Insurance Act, 1938, *i e*, since the Insurance Act, 1938, came into force the transfer of life policies is to be governed by this section [3]

(i) *"Duly authorised agent"* —The word "duly" must be taken to mean "lawfully" and where the law requires a person to be lawfully authorised, the ratification will have retrospective effect and cure a defect in his authority [4]

(ii) *Defects in the notice, waiver of* —Whether any defects in the notice can be waived by the debtor himself can be answered from two considerations, namely, (*i*) whether the object of the Legislature in making provisions for the notice is to protect or benefit an individual litigant or (*ii*) whether the provisions have been enacted for reasons of public policy In the case of the former, it is open to the debtor to waive the defects but in the case of the latter, he cannot be permitted to waive them But it cannot be said as an abstract proposition of law that under no conceivable circumstance can any defect in the notice be waived by the debtor [5]

6 Place where the notice to be delivered—Provisoto sub section (2) —Proviso to sub-section (2) of this section provides that the notice of assignment or transfer of the policy of life insurance must be delivered either at the place in India mentioned in the policy for delivering any notice to the insurer or at his principal place of business in India where the insurer maintains one or more places of business in India

(i) *'Principal place of business', meaning of* —The expression "principal place of business" means the residence and domicile of a trading company, *i e*, the place where the administrative business of the company is conducted which may not be the place where its other business operations are carried on,[6] and in case of a company registered under the Companies Act the controlling power is exercised at the registered office and that office is the 'principal place of business [7] The 'principal place of business should not be its branch office which means (*a*) any establishment described as a branch by the company or (*b*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company [8] The

1 *Re Westerton* (1919) 2 Ch 104 *Brownlee v Robb*, 1907 S C 1301

2 *See* S 6 of the Policies of Assurance Act 1867

3 See *Shankar Vishwanath v Umabai Sadashiva* 37 Bom 471 19 I C 736 *Shamdas Govindram v Mst Savitribai* 31 S L R 98 1937 Sind 181 170 I C 225 *Soma Shetharao v K S Mishra* I L R (1944) Nag 871 1944 Nag 185 219 I C 190

4 *Gowardhandas v F D T Co* 49 M L W 375 : 1939 Mad 513 *see* also *Soames v Spencer* (1822) 1 D & R 32 *Madan v Dunn* 130 E R 947

5 *Sadasook Ramprotap v Hoare Miller & Co*, 27 C W N 733 80 I C 632 1923 Cal 719

6 *Jones v Scottish Accident Insurance Co*, (1886) 17 Q B D 421, *Tuticka Basavaraju v Parry and Co* 27 Mad 315

7 *Wilkins v Scottish Imperial Insurance Co* (1889) 23 Q B D 285

8 *See* S 2 (9) of the Companies Act 1956.

term 'head office' may generally be the registered office but it may not be so necessarily because the head office or the principal office may be located elsewhere than the registered office

Under the Companies Act a company shall have a registered office to which all communications and notices may be addressed and the notice of the situation of the registered office and of every change therein, shall be given to the Registrar who shall record the same [1] The situation of the registered office of a company determines its domicile for all purposes [2] Again where a company incorporated outside India gets itself registered in India and does business in *C* in India through its agents, the company is carrying on business in *C* which should be treated its 'principal place of business' in India [3]

(ii) *Notice, actual or constructive* —' A person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it Even a person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material [4]

In order to constitute a binding notice, actual notice must be definite information given by a person interested in the thing in respect of which the notice is issued [5] It must be shown, in proof of such notice that the mind of the person has, in some way, been brought to an intelligent apprehension of the fact in such a way that a reasonable man would act upon the information so acquired and would regulate his conduct by the information which has thus come to his knowledge [6]

'The doctrine of constructive notice depends upon two considerations first, that certain things existing in the relation or the conduct of parties, or in the case between them, beget a presumption so strong of actual knowledge that the law holds the knowledge to exist, because it is highly improbable it should not , and next, that policy and the safety of the public forbids a person to deny knowledge while he is so dealing as to keep himself ignorant, or so as that he may keep himself ignorant and yet all the while let his agent know, and himself, perhaps, profit by that knowledge "[7]

7 ' **Shall regulate the priority of all claims ', sub-section (3)** —The object of delivering notice of an assignment or transfer to the insurer is twofold, firstly, it makes the assignment or transfer complete and effectual as provided in sub-section (2), secondly, it determines or regulates the priority of all claims under a transfer or assignment as between persons interested in the policy or between assignees or transferees, where there are more than one instrument of transfer or assignment

The determination or regulation of the priority of all claims under a transfer or assignment as between persons interested in the policy is made by the date on which the notice referred to in sub section (1) is delivered to the insurer in the manner laid down in sub-section (2) of this section whereas the

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1 *See* S 146 of the Companies Act 1956

2 *Dunlop Co v Continental Tyre etc Co* (1916) 2 A C 307

3 *Guardian Assurance Co v Shiva Mangal Singh* I L R (1937) All 234 1937 A L J 98 167 I C 897 1937 All 208

4 *See* S 3 and Explanation III thereto of the Transfer of Property Act (IV of 1882)

5 *Ashiq Hussain v Chaturbhuj* 50 All 328 1928 All 159 *infra*

6 *North British Insurance Co v Hallet* (1861) 9 W R (Eng) 880 *Re Tichener* (1865) 55 E R 918 , *Lloyd v Banks* (1868) L J Ch 881 *Saffron Walden Second Ist Building Society v Rayner* (1880) D 406

7 *Kennedy v Green*, (1834) 40 E P p 274 *per* Lord Brougham

determination or regulation of priority of the claims between assignee and assignee or transferee and transferee where there is more than one instrument of transfer or assignment is governed by the order in which the notices referred to in sub-section (1) are delivered also in the manner laid down in sub-section (2) of this section Thus, in both the cases referred to above, the date on which the notice of assignment or transfer is delivered to the insurer determines or regulates the priority of all claims between an assignee and other person interested in the policy and between an assignee and assignee It is to be remembered that the date of delivery of the notice and not the date of the notice itself is the determining factor under this sub-section

Under English law priority of legal assignments as between assignee and assignee or between an assignee and any other person depends entirely on the date of notice to the insurers But this is only an application of the general rule that priority is governed by the order of the date in which assignments are made for a legal assignment is not complete until notice is given[1] The rule enunciated in *Dearle* v *Hall*,[2] is that by giving notice to the insurers a *bona fide* assignee for value gains priority over earlier assignees who have not done so It follows, therefore, from this rule that anyone desiring to deal with a policy of another should enquire of the insurer whether he has had notice of any previous dealings with it[3], and to demand the production of original policy from the insured as his failure to do so would operate as a warning to him that the policy may have been dealt with already and may constitute constructive notice to him of such previous dealings[4] The said rule has also been extended in holding that notice to branch or to an agent of the company who has authority to receive it, would be sufficient[5]

(*i*) *Equitable assignments, what are ?*—Justice, equity and good conscience may give a person a right to the beneficial enjoyment of a policy or some interest in it even though he does not obtain an assignment enabling him to sue under this Act Thus where the assignee has paid the consideration, equity will assist him to perfect his title, even though he has not obtained possession of the policy and has no assignment in his favour The efficacy of equitable assignments has not been taken away by the statutes Equitable assignments give the assignee a more convenient remedy but no alteration in the rights of the parties was contemplated[6]

To constitute an equitable assignment no form is required It can be made even by word of mouth[7] Equitable assignments may be made by any of the following methods—

(*a*) by delivery of the policy when surrounding circumstances indicate an intention to assign[8],

(*b*) by an agreement to assign when a promise made for valuable consideration[9]

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1 See Ss 13 4 and 5 of the Policies of Assurance Act 1867

2 (1828) 3 Russ 1

3 *Williams* v *Thorp* (1828) 2 Sim 257 *Re Weniger's policy* (1910) 2 Ch 291 at p 296 *per* Parker J

4 *Le Feuvre* v *Sullivan* (1855) 10 Moo P C 1 *Spencer* v *Clarke* (1878) 9 Ch D 137 *West of England Bank* v *Batchelor* (1882) 51 L J Ch 199 *Re Weniger's policy supra*

5 *Gale* v *Lewis* (1846) 9 Q B 730

6 *Brandt* v *Dunlop*, (1905) A C 454 at p 461 *per* Lord Macnaghten *Pellas* v *Neptune Marine* (1879) 5 C P D 34 *per* Lord Bramwell

7 *Brandt* v *Dunlop supra*

8 *Dafter* v *Professional Life* (1858) 25 Beav 599, *Chapman* v *Chapman* (1851) 13 Beav 308 *see also Ex parte Kensington* (1813) 2 V & B 79 *Shaw* v *Foster* (1872) L R 5 H L 321 where a borrower deposited his policy with his lender *Rummens* v *Hare* (1876) 1 Ex D 169 donor delivering policy to the donee

9 *Thomas* v *Harris* (1947) 1 All E R 444

But a bare intention to assign a policy even if the proposed beneficiary is informed can give him no rights whatever under it [1]

(c) by a memorandum in writing [2]

But where the assured gave his house-keeper a policy with the following signed endorsement, "I authorise *X* to draw this insurance in the event of my predeceasing her", it was held that the assignment was inoperative as it contained no present words of gift and was without consideration and conditional [3] Again, where *K* wrote a letter to his trustee and sent along with it the policy saying, "the enclosed is the formal letter of assignment previous to a deed, and as binding," it was held that there was a good equitable assignment [4] Similarly, where *A* handed to his landlady an envelope containing (i) a bank deposit receipt, (ii) a signed order directing the bank to pay her, and (iii) a letter addressed to her stating that in view of her kindness he desired to make some return by giving her the amount on deposit, it was held that there was a valid and complete gift [5] A bare voluntary promise to make a gift of a policy passes no interest either in law or equity, to the promisee, for equity will never perfect an imperfect gift [6]

(ii) *Determination of priority* —There is no necessity for giving notice to the insurers with a view to have a good equitable title as against the assignor [7] But a notice becomes important when the priority between successive assignees of the same policy comes to be considered The general rule is that the priority of assignments is governed, apart from notice, by the order of date in which they were made [8] In *Newman* v *Newman*, [9] a question of priority arose where it was contended that a first assignee giving informal notice to the insurer could be defeated by a subsequent assignee giving the formal notice required by the Policies of Assurance Act, 1867 Repelling the contention North, J observed, "It was contended that these words (and the date on which such notice shall be received shall regulate the priority of all claims under any assignment) went much further than was necessary for the protection of the insurance office, and affected the rights of the parties *inter se* - The argument goes as far as this, that *A* having given an insufficient notice, and *B* having afterwards given a statutory notice, their rights must for all purposes be governed by the terms of the statute as to priority, although *B* had at the time notice of *A*'s charge In my opinion that is not the meaning of the statute, which was not intended to affect the rights of persons claiming interests in the money outside the insurance office It was intended to give a simpler remedy against an insurance office, and also to give facilities to insurance offices in settling claims by enabling them to recognise as the first claim the claim of the person who first gave such notice as is required by the statute It was not intended in my opinion to enact that a person who had advanced money upon a second charge with notice of the first, and made subject to it, should, by giving statutory notice to the office, exclude the person who had the prior incumbrance '

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1 *Crossley* v *City of Glasgow Life* (1876) 4 Ch D 421
2. *Choene* v *Boylet* (1862) 31 Beav 351
3 *Re Williams Williams* v *Ball* (1917) 1 Ch 1
4 *Re King Sewell* v *King* (1879) 14 Ch D 179
5 *Re Westerton Public Trustee* v *Gray* (1919) 2 Ch 104
6 *Pearson* v *Amicable Assurance* (1859) 27 Beav 229 *Vavasseur* v *Vavasseur* (1909) 25 T L R 250 *Milroy* v *Lord* (1862) 4 De G F & J 264 at p 274 *per* Turner L J
7 *Cook* v *Black* (1844) 1 Hare 390 *Sewell* v *King supra Fortescue* 3 L J Ch 106
8 *Spencer* v *Clarke*, (1878) 9 (1885) 28 Ch. D 674

Illustration

A charged his life policy as follows

(1) 20th Dec , 1897 } 13th Dec , 1899 } in favour of the insurer himself for Rs 250

(2) 14th July, 1905, in favour of Kapp for Rs 150 subject to insurer's charge

(3) 1st Sept , 1905, in favour of Metropolitan Credit Co , for Rs 115

(4) 27th Nov , 1905, in favour of Telegraph Co for Rs 600 out of which insurer was repaid and paid premiums of Rs 115

(5) 30th April, 1906, in favour of Kapp for Rs 73

(6) 9th May, 1906, in favour of Cohen (subject to insurer's charge)

(7) 25th May, 1906, in favour of Ramsay (subject to insurer's charge)

No notice had been given by any encumbrancer at the time of charge, but thereafter notices were given in the following order

1 Metropolitan Credit Co (3) ,
2 Ramsay (7) — The charge in favour of the insurer needs
3 Kapp (2) and (5) — no notice as he is deemed to have sufficient
4 Cohen (6) — notice of his own charges
5 Telegraph Co (4)

The Court determined the priorities as follows and for the reasons shown

1 The Telegraph Co for Rs 250 (*i e* the amount paid to discharge insurer's charge) and the premium paid to continue the policy

2 Metropolitan Credit Co , being first to give notice

3 Kapp in respect of his first charge on 14th July, 1905 He had no constructive notice at that time affecting his position for had he enquired about the policy, he would have found it to be with the insurer Ramsay, although second to give notice, was postponed because if he had enquired at the time of making the advance he would have known of the charge to Telegraph Co

4 The Telegraph Co for remainder of its charge Kapp's second charge and that of Cohen are postponed for the same reason as Ramsay

5 Ramsay
6 Kapp's second charge } in order of notice [1]
7 Cohen

The principles enunciated by Parker, J , in the case of *Re Wenger's Policy* (*supra*) are as follows

(*a*) in default of gaining priority by giving notice the incumbrancers took according to the order of the dates of their charges ,

(*b*) no incumbrancer by giving notice could gain priority over another of which he had actual or constructive notice at the time he advanced his money ,

1 See *Re Wenger's Policy* (1910) 2 Ch 291

(*c*) an incumbrancer having taken a charge for a specified advance could not add subsequent advances to the charge so as to acquire priority over mesne incumbrancers,

(*d*) such mesne incumbrancers owed no duty to the prior incumbrancer to give him notice of their incumbrances, and

(*e*) if the prior incumbrancer had taken a charge to cover further advances, he would have had a right to add them to the charge so as to acquire priority over mesne incumbrancers of which he had no notice

8 **Duties of insurer, sub-section 4**—The duties of an insurer with respect to assignment or transfer of policy of life insurance of which notice has been delivered to him in accordance with the provisions of sub-section (2) of this section, as envisaged under sub-section (4) of this section are—

(*i*) that he shall record, upon the receipt of the notice, the fact of such transfer or assignment, in such recording he shall mention (*a*) the date on which the notice is received, and (*b*) the name of the transferee or the assignee, and

(*ii*) that he shall grant a written acknowledgment of the receipt of such notice if there be a request to that effect from (*a*) the person by whom the notice was given or (*b*) from the transferee or assignee

(*i*) *Effect of acknowledgment*—The insurer can charge the payment of a fee for such acknowledgment being given but such charge must not exceed Re 1 in any case The effect of this acknowledgment is that it shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates The acceptance of notice of an assignment by the insurer will also estop him from subsequently repudiating the policy, if he were then aware of a breach of condition and will cast on him the duty of informing the assignee should he subsequently discover information entitling him to repudiate it [1]

(*ii*) *Interpleader*—If the provisions of this section are of no assistance to an insurer his only remedy in the event of competing claims is by way of interpleader [2] But the insurer cannot by interpleader raise any question between himself and a claimant [3] As to where interpleader suit may be instituted section 88 of the Code of Civil Procedure (V of 1908) provides that where two or more persons claim adversely to one another the same debt, sum of money or other property, movable or immovable, from another person, who claims no interest therein other than for charges and costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself But where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted [4] In an interpleader suit all contesting defendants are in the position of plaintiffs [5]

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1 *Mangles* v *Dixon* (1852) 3 H L C 702 - *Scottish Equitable Life* v *Buist* (1877) 4 R (Ct of Sess) 1076

2. *Prudential* v *Thomas* (1867) L R 3 Ch 74 *Randall* v *Lithgow* (1884) 12 Q B D 525.

3. *Bignold* v *Audland* (1840) 11 Sim. 23.

4 *See* also Order XXXV of the said Code.

5. *Maharaja of Kolhapur* v *Sundaram* Mad. 1 for conditions of suit see *Shelley Bonnerjee* v *Raj* 37 Cal 552 *Hari Karmakar* v Rang 455 ; *Asan Ali* v 1922 Cal 138

(iii) *Payment of policy money into Court* —The insurer has also the option to pay the amount of policy into Court when he will be of opinion that by reason of conflicting claims to or insufficiency of proof of title or for any other adequate reason it is impossible otherwise for him to obtain a satisfactory discharge for the payment of the said money [1]

9 **"Shall recognise the transferee or assignee", sub-section (2)** — When the formalities which have to be observed in the case of a transfer or assignment coming under this section are complied with, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2) of this section, recognise the transferee or the assignee named in the notice as the only person entitled to the benefit named under the policy and such a person shall be subject to all the liabilities and equities to which the transferor or assignor was subject at the time of the transfer or assignment The assignee may institute any proceedings in relation to the policy without obtaining the consent of the assignor or making him a party to the proceedings The only limitation so far as the assignee is concerned is that he cannot be in a better position than the person who effected the assignment [2]

(i) *Assignee stands in the shoes of the assignor* —Sub-section (5) also provides that the assignee or transferee shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment, that is to say, a transfer or assignment of policy can never give the transferee or assignee any better rights against the insurer than those of assignor In other words, as against the insurer the assignee or the transferee stands in the shoes of the assignor or transferor Thus, where a policy, voidable for non-disclosure, had been assigned to *B*, the latter could not, in a suit for recovery of money under the assignment against the insurer, be in any better position than that in which the assured could have been, and his non-disclosure therefore precluded *B* from recovery of the policy moneys [3] Similarly, where a policy is vitiated by the assured's fraud and the insurer pays his assignee in ignorance of such fraud, he is, on discovering the fraud, entitled to recover the money so paid as money paid under a mistake of fact [4] The Indian law on the subject that the assignee cannot stand on a better footing than the insured has been authoritatively stated by the Supreme Court in the case of *Mithoolal* v *Life Insurance Corporation of India* [5] In that case one *MD* submitted a proposal in December, 1942 for the insurance of his life with *OG* Company for a sum of Rs 10 000 but the proposal lapsed on the expiry of six months for want of completion of the medical examination On 16th July, 1944, he made a second proposal for such insurance, this time for Rs 25,000 On 13th March, 1945, the policy was issued to him by the said company on usual terms one of which was that in case it would appear that any untrue or incorrect averment had been in the proposal form or personal statement, the policy would be void Thereafter the policy lapsed for non payment of premium for 1945 and on 28th October *MD* made a request for revival of the policy and in the meanwhile on 18th October, 1945 the policy was assigned in favour of *MN* by an endorsement made on the policy itself The assignment was duly registered by the *OG* Company by means of its letter, dated 1st November, 1945 On receipt of the revival fee the policy had been revived sometime in July, 1946 *MD* died in November, 1946 Thereafter *MN* the assignee made a demand against the *OG* Company for a sum of

1 *See* S 47 and Notes thereto *post*
2. *Mahalakshmi D M* v *Indian Insurance and Banking Corporation* 1957 Mad 115 *supra*.
3. *British Equitable Insurance Co* v *Great Western Railway Co* (1869) 38 L J Ch 314
4 *Lefevre* v *Boyle* (1832) 1 L J K B 199
5 (1962) 32 Com Cas 177 : 1962 S C 814

Rs 26,000 and odd on the basis of the life insurance policy which had been assigned to him This claim or demand of *MN* was repudiated by the *OG* Company by a letter, dated 10th October, 1947, on the ground that *MD*, the assignor, was guilty of deliberate misstatements and fraudulent suppression of material information in answer to the questions in the proposal form and personal statement, which formed the basis of the contract between the insurer and the insured On the repudiation of the claim *MN*, the assignee brought the suit which was decreed by the trial Court and on appeal the suit was dismissed with costs by the High Court upon a finding that the policy-holder was guilty of a fraudulent suppression of material facts relating to his health and hence the *OG* Company was entitled to avoid the contract on that ground In appeal before the Supreme Court it was contended on behalf of the assignee *MN* that section 38 of the Insurance Act provided a complete Code for assignment and transfer of insurance policies and the assignment made in favour of *MN* by *MD* was a valid assignment in accordance with the provisions of section 38 aforesaid Repelling the said contention the Supreme Court has held that if *MD*, the assignor was himself guilty of a fraudulent suppression of material facts on which *OG* Company was discharged from performing its part of the contract, *MN*, the assignee, who holds an assignment of the policy cannot stand on a better footing than *MD* himself and hence *MN* is clearly out of Court and cannot claim the benefit of a contract which had been entered into as a result of fraudulent suppression of material facts by *MD* [1]

In the United States of America, the assignment of a policy of insurance, such as life insurance, places the assignee in the same status with respect to all rights and liabilities under the policy which the insured occupied before the transfer [2] Where the assignee holds the policy by way of security he is entitled only to the amount of his claim and advances with interest, although the conveyance is absolute in form [3] Whether the assignment is absolute in form or as collateral security, equity will regard the assignment as collateral security if such be the fact [4] The assignee of an insurance policy who first gives notice to the company has the prior right according to some authorities but there is also authority that the assignee prior in point of time is prior in right, irrespective of notice to the company [5]

(*ii*) *Loss caused by assured's own wrongdoing assignee cannot recover* —The ordinary rule is that a man should not take advantage of his own wrong So where the assured is debarred from recovering the policy money by reason of his own wrongdoing any person claiming through him or under any derivative title whatsoever is equally debarred Even the claim of assignees for value or mortgagees would also be barred although they were unaware of the illegal act [6] The reasons behind the rule are "that a man is not to be allowed to have recourse to a court of justice to claim a benefit from his crime whether

1 *See* p 821 of A I R 1962 S C 814 *per* S K Das J

2 *Moen* v *Williams* 135 So 555 *Potter* v *North-Western Mutual Life Insurance Co* 216 Iowa 795 *North-Western Mutual Life Insurance Co* v *Barker's Executors* 44 S W 2d 292

3 *Home Life Insurance Co of New York* v *Masterson* 21 S W 2d 414 *Travis* v *Metropolitan Life Insurance Co* 173 So 721 *Jordan* v *Poden* C C A Mich, 292 F 573

4 *Mutual Life Insurance Co of New York* v *Illinois Nat Bank of Springfield*, 34 F Supp 27[illegible]

5 *See* 6 C J S p 65; *see also Fulmer* v *American Grocery Co* 21 App Div *Columbia Bank* v *Equitable Life Assurance Society* 61 App Div 504; *Hoffman* v *Connecticut Mutual Life Insurance Co* 8 F 450; *New Almaden* [illegible] *Peirson* 114 N Y 415

6 *Cleaver* v *Mutual Reserve Fund Life Association* 1 Q B 147, *affirmed* [illegible] 2 K B 146; *Re Crook* [illegible] *Re Sievewright* [1915] Ch 21[illegible] (1911) Ch 21[illegible]

under a contract or gift"[1] or that "no person can obtain or enforce any rights resulting from his own crime",[2] or as has been observed by Fry, L J in *Cleaver v Mutual Reserve Fund Life (supra)* that 'No system of jurisprudence can with reason include among the rights which it enforces rights directly resulting to the person asserting them from the crime of such person" But in *Moore v Woolsey*,[3] Lord Campbell, C J, observed thus 'Where we are called upon to nullify a contract on the grounds of public policy we must take care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind That the condition (in favour of a *bona fide* assignee for valuable consideration) may promote evil by leading to suicide is a very remote and improbable contingency, and it may frequently be very beneficial by rendering a life policy a safe security in the hands of the assignee" The case of *Moore v Woolsey*[4] has evoked the following comments "If that case be accepted as an authority there is nothing illegal in the insurers agreeing with the assured that if he assigns the policy *bona fide* for valuable consideration and thereafter causes his own death by a criminal act, they will pay the policy moneys to his assignee, and if that be so public policy does not demand that a loss caused by the illegal act of an assured should be an absolute exception from the risk, at any rate in the case of life policies and other policies which are not contracts of indemnity'

10 Section 38 has no retrospective operation, sub-section (6) — The rule of construction as to whether a statute is prospective or retrospective has been laid down by Wright, J, in *In re Athlumney*[5] thus 'No rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment If the enactment is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only'[6] A section may be prospective in some parts and retrospective in other parts[7]

Sub-section (6) of this section saves the rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of the Insurance Act from being governed by the provisions of this section, that is to say, an assured effecting an assignment of his life policy prior to the commencement of the Act *i e*, prior to 1st July, 1939, would not be governed by the provisions of this section but would be governed by the provisions of the Transfer of Property Act as if the present Act has not been passed The language of sub-section (6) makes the provisions of this section prospective and not retrospective This sub-section is based upon the presumption that the Legislature does not intend what is unjust Every statute it has been said, which takes away or impairs vested rights acquired under existing laws or creates a new obligation, or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be presumed out of respect to the Legislature, to be intended not to have a retrospective operation[8]

11 Conditional assignment, its validity sub-section (7) — Sub-section (7) of this section validates an assignment in favour of a person made

1 *See* Lord Atkin's Observations in *Beresford v The Royal* (1937) 2 K B 197
2 *See* observations of Sir Samuel Evans *P* in *Crippen's* case (1911) P 108
3 (1854) 4 El and Bl 243
4 *See* MacGillivray on Insurance Law 5th Edn Vol I p 263
5 (1898) 2 Q B 551 552.
See also *Pandurang v Nurumva* I L R (1960) Bom 378 62 Bom L R 547 *Hazarilal v Mahesh* 1961 M P C 557 1961 M P L J 590 *Ajit Kumar Palit v State* 65 C W N 977 1961 Cal 560 (F B) *Sardar v State* 1961 Cal 181 *Shah Bhairaj Ajuraji Oil Mills and Ginning Factory v Subhash Chandra Yograj Sinha* 1961 S C 1596
6 Maxwell Interpretation of Statutes

with the condition (i) that it shall be inoperative or (ii) that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured It also validates an assignment in favour of the survivor or survivors of a number of persons Such validity cannot be defeated even if there be any law or custom having the force of law to the contrary that is to say, such validity of an assignment attached with the condition as stated above or assignment in favour of survivor or survivors will not be called in question although such assignments as are referred to above may be invalid or inoperative under any law or custom having the force of law for the time being in force

Thus, though under the rules of the Muhammadan Law a condition to a gift is considered to be void, the gift itself is not affected thereby The condition goes but the gift remains and takes effect as an absolute one A conditional assignment by a Muhammadan assured of his policy to his wife made prior to the Insurance Act of 1938 has, therefore, to be construed as contingent gift with the condition going and the gift remaining and taking effect as an absolute one The heirs of the wife who has predeceased her husband would, in such a case, take three fourths of the amount of the policy [1] The words "any law or custom" in this sub-section are wide enough to cover the Muhammadan law The gift of insurance policies by a Muhammadan to his wife is valid even if it contains a proviso that in the event of his wife predeceasing him, the assignment would become null and void [2] Even prior to the enactment of this sub-section, an assignment of life policy on condition that the policy should revert to the assured if the assignee predeceased him before maturity was valid in law On such a conditional assignment an immediate vested interest is created in the assignee and such an assignment is not revocable The effect of an assignment is, it operates to completely divest the assignor of any right under it, and the effect of the condition is only to make the assignment inoperative upon the subsequent happening of either of the two contingencies [3] In the same case it has also been held that this sub-section has no retrospective effect and hence an assignment effected prior to the coming into force of the Insurance Act would not be governed by it [4]

12 Assignment of fire insurance policy —Under section 15 of the Policies of Insurance (Marine and Fire) Assignment Act (V of 1866), it was possible to assign a fire as well as a marine insurance policy but the said Act was repealed and the provisions of that section were re-enacted, with certain alterations as section 135 and were introduced for the first time in the Transfer of Property Act by Act II of 1900 Section 135 as it stood in Act II of 1900 was substituted for the present section in the said Act by section 3 of the Transfer of Property (Amendment) Act VI of 1914 The present section 135 provides, "Every assignee, by endorsement or other writing of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself" Thus what this section provides is that an assignee of policy of fire insurance could not be clothed with the right of suit against the insurer simply on an assignment of policy from the assignor but that to be clothed with such right the property in the subject insured must absolutely vest in the assignee at the date of the assignment Conversely a person in whom the property vests cannot have any right of suit unless he takes an assignment

1 *In re Khyrunnissa Begum* 1955 Com Cas (Ins) 7 1955 Mad 459
2. *Sadiq Ali v Zohida Begum*, I L R (1939) All 927 1939 All 744 *supra*
3 *In re Khyrunnissa Begum supra*
4 *See* also Note 4 (vi) *supra*

of the policy Thus, where *A* mortgaged certain property to *B* and then insured the same against fire, *B*, who did not take an assignment of the policy, could not sue the insurer for the insurance money when the property was destroyed by fire [1]

Section 49 of the Transfer of Property Act, again provides, "Where immovable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually received under the policy, or so much thereof as may be necessary, to be applied in reinstating the property"

For the proper appreciation of the scope of the provisions of section 49 of the said Act two English decisions, namely, of *Garden* v *Ingram*,[2] and of *Rayner* v *Preston*[3] need consideration as according to one view section 49 is based upon the dissenting judgment of James L J in *Rayner* v *Preston*,[4] and according to other the said section is based on *Garden* v *Ingram* [5]

The *ratio decidendi* of *Rayner* v *Preston*, is that a fire policy does not attach itself to the thing insured It is a mere personal contract between the insured and the company If the policy is assigned, care should be taken to assign the thing insured at the same time, otherwise if a fire occurs the assignor may be unable to recover from the company because he has a signed the policy and the assignee may be unable to recover because he has not yet acquired an insurable interest But in the same case James L J, in a dissentient judgment held that a contract of fire insurance should be held to run with the land and enure to the benefit of the person from time to time interested therein

The *ratio decidendi* of *Garden* v *Ingram* is that when a man insures property under an absolute covenant to insure, and then assigns or charges the lease to secure a sum of money, he still retains his interest in the property, subject to the charge Then when the property is burnt and the insurance money becomes payable, the mortgagee is entitled to the benefit of the policy as such benefit passed by the mortgage

Section 47 of the Law of Property Act, 1925 (15 Geo V, ch 20) which is based on the view of James L J, in *Rayner* v *Preston*, runs thus 'Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor' [6] The trend of decisions goes to establish that a contract of fire insurance being a contract of indemnity, the right to recover the loss under such policy when it occurs rests only with the assured and assignment of the policy cannot operate to alter the terms of the original contract in this respect [7] Again, if the assignor divests himself of his interest in the subject matter insured he will have no rights which he can assign,[8] so

1 *P J Clarke Firm* v *Motor Union Insurance Co* 67 I C 777 1923 Rang 6
2 (1852) 23 L J Ch 478
3 (1881) 50 L J Ch 472
4 See *P V Clarke Firm* v *Motor Union Insurance Co supra*
5 See A I R Commentaries on Transfer of Property Act Vol I p 667
6 See sub section (1) of S 47
7 *Sadlers Company* v *Badcock* (1743) 2 Atk. 554
8 *North of England Oil Cake Co* v *Archangel Marine Insurance* (1875) L R 10 Q B 249

also if, after assignment, he parts with the interest, the assignment will be valueless But a mortgagor has an insurable interest in the property mortgaged[1], even though he parts with the legal title [2] The reasons are (*a*) that the mortgagor has still the equity of redemption, *i e*, the right to regain his whole interest in the property on repayment of the debt still vests in him [3] and even if the property is destroyed he is still liable to pay the debt [4] Under the Indian law as envisaged under section 49 of the Transfer of Property Act, where the transfer is made by way of a "mortgage or lease" the mortgagor or lessor retains an interest in the property, and in case of damage thereto or loss thereof, he can recover the insurance money from the insurer on the basis that he has suffered loss Similarly, where there is an out and out 'sale' and the vendor has also entered into a contract to re-purchase the property from the vendee, the vendor still has an "insurable interest" and can therefore recover the insurance money as "insurable interest" is not the same as "legal interest" as defined in section 54 of the Transfer of Property Act [5] Section 49 of the said Act is applicable only in cases where "at the date of the transfer" the property has been insured, Consequently, it does not apply where the insurance is effected 'after' the date of the transfer [6] Moreover, where there is no assignment of the policy in his favour the transferee cannot claim the insurance money from the insurer direct but he can only ask the transferor to apply any monies "actually received" by him, in reinstating the property Perhaps the transferee would be without any remedy if the transferor has not received any money at all [7]

The general rule in policies of indemnity is that, if the policy in terms covers the interests of others an assignment by the assured to such persons would be effective irrespective of whether the assured has parted with his interest at the time of loss But where there is no such clause or an intention to cover othe s no assignee can recover either by contract or by operation of law when the assured has parted with his interest [8]

If the assignment of property insured against fire be total, the assignor cannot recover on the policy for himself as his interest in the property will have ceased but if the assignment be partial, he can recover for his own benefit only to the extent of his remaining interest The assignee of property insured against fire can recover nothing under policy effected by the assignor unless (*i*) it was part of the contract between the assignor and assignee that the latter should have the benefit of the pol cy as between assignor and himself, and (*ii*) the office consented to hold the assignee assured either by the terms of the policy, or on notice of the intention to assign before transfer of the policy If the policy expresses that the consent of the office shall be given in any particular form, that form must be strictly complied with [9]

In the United States of America, contracts of fire insurance being personal contracts are not assignable before loss so as to transfer to the assignee the

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1 *Smith* v *Lascelles* (1788) 2 T R 187
2. *Alston* v *Campbell* (1779) 4 Bro P C 476 *Hutchinson* v *Wright* (1858) 25 Beav 444
3 *Lees* v *Whiteley* (1866) L R 2 Eq 143, *Glover* v *Black* (1763) 1 Wm Bl 396
4 *Provincial Insurance of Canada* v *Leduc* (1874) L R 6 P C 224
5 *Gnanasundaram* v *Vulcan Insurance Co Ltd*, 9 Rang 452 134 I C 221 1931 Rang 210
6 *P V Chetty Firm* v *Motor Union Insurance Co* 1923 Rang 6 *supra* *see* also *Lees* v *Whiteley* (1866) 35 L J Ch 412
7 See *P V Chetty Firm* v *Motor Union Insurance Co supra* *Poole* v *Adams* 33 L J Ch 639
8 See *Castellain* v *Preston* (1883) 11 Q B D 380 *Nichols* v *Scottish Union*, (1885) 2 T L R 190
9 *See* Preston and Colinvaux on Law of Insurance 2nd Ed, pp 163-164

full legal title of the original insured, unless insurer consents to such assignment, notwithstanding the policy runs to insured, his executors, administrators and assigns [1] A statute making instruments for the payment of money assignable, even though such assignment is prohibited by the instrument, does not apply to an assignment of fire insurance policy before loss [2] But an assignment of the policy without obtaining consent of the insurer thereto would not make the policy void so as to debar the original insured from recovering under the policy [3]

Where an application for consent to an assignment is made, the company has the duty either to consent to the assignment or to return the unearned premium [4] Again where a consent is fairly procured it cannot be withdrawn against the will of the assignee [5] Consent to an assignment may be given by the President of the Company or by the Secretary and a formal vote of the Directors is not necessary Such consent may also be given by an authorised agent of the insurer [6] An agreement to consent must rest on a consideration in order to constitute a new contract between insurer and assignee [7]

13 **Assignment of marine insurance policy**—Like the assignment of fire insurance policy a transfer or assignment of a policy of marine insurance is also governed by the Transfer of Property Act (IV of 1882) Section 130A of the said Act provides transfer of policy of marine insurance and section 135A provides assignment of rights under policy of marine insurance These two sections were newly inserted by the Transfer of Property (Amendment) Act (VI of 1944) Previous to the said Amendment Act VI of 1944 assignment of rights under marine insurance policy was governed by the old section 135 The reference to marine insurance policy was omitted from section 135 by the said Amendment Act for the reasons stated in the Statement of Objects and Reasons in Bill No 9 of 1944 thus "The rules and principles governing a marine insurance policy being materially different from those governing a fire insurance policy, it is very unsatisfactory to accord the same treatment in the matter of assignment to both categories of policies To take but one instance, a fire insurance policy is not assignable after loss, but the nature of a marine insurance contract is such as to require that marine insurance policies should be assignable even after loss In the United Kingdom, assignability of marine insurance policies after loss is placed beyond doubt by section 50 of the Marine Insurance Act But in the absence of a similar provision here, it is doubtful if Courts in British India would hold that they are so assignable "[8]

Section 130A provides thus "(1) A policy of marine insurance may be transferred by assignment unless it contains terms expressly prohibiting assignment and may be assigned either before or after loss

(2) A policy of marine insurance may be assigned by endorsement thereon or in any other customary manner

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1 *Bergson v Builders Insurance Co* 38 California 541 *Stout v City Fire Insurance Co* 12 Iowa 371 *Beck Brown Realty Co v Liberty Bell Insurance Co* 241 N Y S 727 *Perlman v Home Fire Securities Fire Insurance Co* 217 N W 258

2 *Deans v Bremer County Farmers Mutual Fire Insurance Association* 154 Iowa 336

3 *Fry v Continental Insurance Co* 74 S W 162

4 *Slankiewicz v Hartland Farmers Mutual Fire Insurance Co*, 236 N W 596

5 *Grant v Elliot and Kittery Mutual Fire Insurance Co* 75 Maine 196

6 *Deans v Farmers Mutual Fire Insurance Co* 45 S E 955 *Sanders v Hillsborough Insurance Co* 44 N H 238 *Bennett v National Fire Insurance Co* 143 S W 2d 941

7 *Equitable Insurance Co v Cooper* 60 Ill 509 *see* also 45 C J S pp 49 to 52

8 See *Gazette of India* Part V, dated 19th February, 1944

(3) Where the insured person has parted with or lost his interest in the subject matter insured and has not before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative

Provided that nothing in this sub-section affects the assignment of a policy after loss

(4) Nothing in clause (*e*) of section 6 shall affect the provisions of this section"

Section 135A on the other hand provides as follows

(1) Where a policy of marine insurance has been assigned so as to pass the beneficial interest therein, the assignee of the policy is entitled to sue thereon in his own name, and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected

(2) Where the insurer pays for a total loss, either of the whole, or in the case of goods, of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the insured person in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the insured person in and in respect of that subject-matter as from the time of the casualty causing the loss

(3) Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the insured person as from the time indemnified by such payment for the loss

(4) Nothing in clause (*e*) of section 6 shall affect the provisions of this section

Sections 130A and 135A of the Transfer of Property Act present the complete law, both substantive and adjective, of assignment or transfer of marine insurance policies Thus transfer of a policy of marine insurance by assignment is permissible under the law unless such transfer is prohibited according to the terms of the policy itself Such assignment can be made by mere endorsement on the policy or by any other method allowed under the custom of marine insurance It can be made whether before or after the loss But an assignment of a policy of marine insurance is inoperative in law where such assignment is made after the insured has parted with or lost his interest in the subject matter insured and there was neither any express nor implied agreement to assign the policy either before or at the time when the insured so parted with or lost his interest in the said subject-matter

Where a policy of marine insurance is validly assigned in accordance with the provisions of section 130A as aforesaid such assignment passes the beneficial interest in the policy to the assignee who, then becomes entitled to sue on the policy in his own name but the insurer retains his right to defend the suit and can take the same plea or pleas which he was entitled to take had the suit been brought by the insured or by any person on whose behalf the policy was effected The insurer also becomes entitled to take over the interest of the insured over the remainder of the subject matter where for a total loss of the whole of the subject matter insured or in the or any apportionable part thereof, and he is thereby subrogated

rights and remedies of the insured with regard to the said subject matter as from the time of the casualty causing the loss But where he pays for a partial loss he acquires no title to the subject-matter insured or such part of it as may remain although he is subrogated to all the rights and remedies of the insured as from the time indemnified by such payment for the loss The difference between the payment of total loss and partial loss lies in this that in the case of the former the insurer acquires title to the subject-matter insured and is also subrogated to all the rights and remedies of the insured, whereas in the case of the latter although he is subrogated to the rights and remedies of the insured he acquires no title to the subject-matter insured Both the sections make provisions in saving the right of the assignee to sue from being non-transferable under clause (*e*) of section 6 of the said Act A 'mere right to sue' is made non-transferable under the said clause of the said section The expression means a right to sue "unconnected with the ownership of any property", i *e*, unconnected with a right in existence [1]

An insurer who has paid for a total loss of an apportionable part of some goods carried for transit by land by a Railway Administration can maintain suit in his own name against the carrier for reimbursement of the amount paid to the insured for the loss Under the English law or rather the English procedure the underwriter is only entitled to the benefit of such remedies, rights, or other advantages as the assured would himself be able to enjoy The underwriter has no independent right of his own and cannot even sue in his own name [2] There is no reason, however, why the peculiar form of English procedure should be engrafted on the procedure prevailing in our law courts There is no doubt that in our law courts a subrogee under section 92 of the Transfer of Property Act can enforce his right by a suit without using the name of the mortgagee whose mortgage he has redeemed A subrogee under section 135A (2) of the said Act should not be placed in a more disadvantageous position than a subrogee under section 92 aforesaid If any doubt remains about the right of suit of an insurer under section 135A (2), it is dispelled by sub section (4) which makes clause (*e*) of section 6 inapplicable to all the sub sections of section 135A Clause (*e*) of section 6 of the said Act provides that a mere right to sue which includes a personal right of action cannot be transferred By removing this bar, sub-section (4) of section 135A makes a deliberate departure from the English rule of procedure which lays down that an insurer who pays for a total loss cannot sue independently in his own name [3] In *Union of India* v *Bharat Fire and General Insurance Ltd* [4] the Punjab High Court also held the same view relying on the decision of the Calcutta High Court in the said case of *Alliance Assurance* v *Union of India* [5] The decisions in *British and Foreign Marine Insurance Co Ltd* v. *India General Navigation and Railway Co. Ltd* [6], and *K V Parsamanna Marakayar and Sons* v *Bantans and Co* [7] can no longer be said to be good law after the amendment brought by section 135A of the Transfer of Property Act and that they were based on the trilogy of the English decisions [8]

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1 See *Sri Inver Gopal Jew* v *Globe Theatres* I L R (1944) 2 Cal 542 1947 Cal 200 *Hirachand Amichand* v *Nemchand* 47 Bom 719 1923 Bom 403 *Ram Dayal* v *Mukat Manohar*, 1937 All 317 *Gopala Iyer* v *Ramaswami* 61 C 290 Mad

2. *James Nelson and Sons Ltd* v *Nelson Line (Liverpool) Ltd* (1906) 2 K B 217 *Lang* v *Victoria Insurance Co* (1897) A P C. 250 *Simpson and Co* v *Thompson Burrel* (1877) A C. Vol 3 p. 279 referred

3 *Alliance Assurance* v *Union of India* 62 C W N 589 I L R (1958) 1 Cal 544

4. I L R (1961) 1 Punj 271 63 Punj L R 294 (1961) 31 Com Cas (Ins) 31 1961 Punj 157

5 62 Cal W N 539 : I L R (1958) 1 Cal 544

6 38 Cal 28

7 49 Mad 156

8 *See* also *Lassen Dra C A.* v *Bosch Ltd* (1940) A C 412

But in *Indian Trade and General Insurance Co, Ltd* v *Union of India*[1] where a consignment of jute despatched by railway was the subject-matter of marine insurance and the goods were damaged in transit by fire but there was no total loss either of the whole of the goods or any apportionable part thereof, it was held that sub-section (3) of section 135A and not sub-section (1) or (2) would be the proper statutory provision applicable to the case In such a case where the insurer had paid for a partial loss he acquires no title to the subject-matter but is subrogated to all rights and remedies of the insured person as from the time of the casualty causing the loss It was further held that the mere fact of subrogation however did not entitle the insurers to enforce their rights in their own names Moreover, where the deed of subrogation gave the insurers nothing more than what they would have under section 135A (3), it cannot be said that there was any assignment of the subject-matter of the insurance by the document and would not entitle them to file a suit for damages against the railway in their own name

The assignment of marine insurance policy in English law is governed by the provisions of the Marine Insurance Act, 1906 [2] The provisions therein are more or less similar to those contained in sections 130A and 135A of the Transfer of Property Act already considered above Thus, under the English law, a marine policy is assignable either before or after loss unless it contains terms expressly prohibiting assignment, and it may be assigned by endorsement thereon or in any other customary manner [3] Similarly, where a marine policy has been assigned so as to pass the beneficial interest in it the assignee is entitled to sue thereon in his own name, and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected [4] Likewise, where the assured has parted with or lost his interest in the subject-matter insured before the loss occurs and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative [5] But once the loss has occurred and the right to indemnity has therefore crystallised, the assured can assign his interest under the policy irrespective of whether or not he has parted with or lost his interest in the subject-matter insured between loss and assignment [6] Again, where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance unless there is an express or implied agreement with the assignee to that effect This provision does not, however, affect a transmission of interest by operation of law [7]

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1 98 C L J 106 1957 Cal 190

2 6 Edw 7 C 41 *see* Ss 15 50 and 51 of the Marine Insurance Act 1906

3 *See* S 50 (1) and (3) of the Marine Insurance Act 1906 and *Lloyd* v *Fleming* (1872) L R 7 Q B 299 *Swan & Clelands Graving Dock & Shipway Co* v *Maritime Insurance Co & Crosbaw* (1907) 1 K B 116 (assignment of claim without assign ing policy) *Pyman* v *Marten* (1906) 24 T L R 10 C A (clause prohibiting assignment) *Baker* v *Alam* (1910) 15 Com case 227 (customary manner) *J Aron & Co (Incorporated)* v *Miall* (1928) 34 Com case 18 C A (endorsement in blank)

4 *See* S 50 (2) of the Marine Insurance Act, 1906 and *Williams* v *Atlantic Assurance Co Ltd* (1933) 1 K B 81 Ch *William Trickett & Sons Ltd* v *London and Provincial Marine & General Insurance Co Ltd* (1912) 3 K B 614 *Graham Joint Stock Shipping Co Ltd* v *Merchants Marine Insurance Co Ltd*, (1924) A C 294 H L *P Samuel & Co Ltd* v *Dumas* (1924) A C 431 H L

5 *See* S 51 of the Marine Insurance Act 1906

6 *See* Ss 50 (1), 51 Proviso of the Marine Insurance Act 1906

7 *See* S 15 of the Marine Insurance Act 1906

Again, where the assured parts with the whole of his interest in the insured property before the loss without assigning the policy of insurance and without an agreement to assign or hold it for the benefit of the transferee, the policy becomes unavailable to anyone [1] But if at the time of the transfer of the insured property the transferor assigned the policy or agreed to assign it or to hold it for the benefit of the transferee, the latter was always entitled to maintain an action on the policy in the name of the assured[2], and this could be done even if the assured had become a bankrupt after the assignment [3] The assignee of a policy can only avail himself of the insurance to the extent to which the assured has agreed to assign his rights to him [4]

In the United States of America, a marine insurance policy may be assigned without the consent of the insurer if there be no express stipulations in the contract of insurance to the contrary [5] Again, a mere change of ownership or interest in the subject-matter of marine insurance will not avoid the policy,[6] but if the transfer is absolute, so that insured ceases to have any insurable instrument there can be no recovery on the policy in case of loss [7] If the transfer is conditional the insured continues to have an insurable interest and can recover [8] The rule supported by the weight of authority is that where the assignment clause is in simple terms, the assignee is merely the appointed agent of insured to receive the money, and he is bound by any act of insured that would forfeit the policy [9] A clause in a policy "for the account of whom it may concern" inures to the benefit of a subsequent vendee, and being in writing, prevails over a printed stipulation that the policy shall be void, if any change occurs in the interest title, or possession of the subject matter insured [10]

39 (1) The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death

Nomination by policy holder

Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for

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1 *North of England Oilcake Co v Archangel Insurance Co* (1875) L R 10 Q B 249

2 *Powles v Innes* (1843) 11 M & W 10 *Sparkes v Marshall*, (1836) 2 Bing N C 761 *Gibbon v Winter*, (1833) 5 B & Ad 96

3 *Castelli v Boddington* (1852) 1 E & B 66 affirmed *sub nom Boddington v Castelli* (1853) 1 E & B 879 Ex Ch

4 *Lowden v Hartford* (1959) 29 L J Ex 36 *Stevens v Shillers and Bakers Ltd* (1911) 2 K B 7 *Lancaster v Axzer* (1905) 2 K B 184 D C *See also* Halsbury's Laws of England Simonds 3rd Edition Vol 22 pp 108-109 MacGillivray on Insurance Law Vol 2 p 947

5 *Sinchart v Missouri Farmers' Mutual Tornado Cyclone and Windstorm Insurance Co* 138 S W 2d 9

6 *Bell v Western Marine and Fire Insurance Co*, 39 Am D 542

7 *Lazarus v Commonwealth Insurance Co*, 5 Pick 76

8 *Gordon v Massachusetts Fire and Marine Insurance Co* 2 Pick Mass 249

9 *Aetna Insurance Co v Houston Oil and Transport Co* 284 U S 629

10 *Hogan v Scottish Union and National Insurance Co* 186 U S 423

payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy or registered in records of the insurer

(3) The insurer shall furnish to the policy-holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination

Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy

(5) Where the policy matures for payment during the lifetime of the person whose life is insured or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of succession certificate, as the case may be

(6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (III of 1874) applies or has at any time applied

Provided that where a nomination made whether before or after the commencement of the Insurance (Amendment) Act, 1946 (VI of 1946), in favour of the wife of the person who has insured his life or of his wife and children or any of them is expressed, whether or not on the face of the policy, as being made under this section, the said section 6 shall be deemed not to apply or not to have applied to the policy

SYNOPSIS

1 *Legislative changes*
2 *Object of the section*
3 *Scope*
4 *Applicability*
5 *Nominee and his legal position*
6 *"Policy holder may nominate," sub-section (1)*
7 *"A minor may be nominated as a nominee" proviso to sub-section (1)*
8 *Nomination how to be effected, its change sub-section (2)*
9 *Insurer to furnish written acknowledgment sub-section (3)*
10 *Automatic cancellation of nomination, exception, sub-section (4)*
11 *On maturity policy money payable to whom, sub sections (5) and (6)*
(A) *Heirs*
(B) *Legal representatives*
(C) *The holder of succession certificate*
(D) *Policy-holder*
12 *Policy under the Married Women's Property Act, exemption from the operation of the section, sub section (7)*

1 Legislative changes —(*a*) The words "on his own life" occurring in sub section (1) were inserted by section 15 of Act XI of 1939 the words 'not being an absolute assignee of the benefits under the policy" occurring in the same sub-section were omitted by section 26 of Act XIII of 1941 and the proviso to the said sub-section was added by section 29 of Act XLVII of 1950

(*b*) The words "but unless notice in writing records of the insurer' occurring in sub-section (2) were inserted by section 15 of Act XI of 1939

(*c*) Sub-section (3) was substituted for the original sub-section by section 15 of Act XI of 1939 and the proviso to sub-section (4) was added by section 26 of Act XIII of 1941

(*d*) The words "lifetime of the person whose life is insured" in sub-section (5) were substituted for the words 'lifetime of the policy-holder" by section 15 of Act XI of 1939 and the words "person whose life is insured" in sub-section (6) were substituted for the word "policy-holder" by section 15 of the said Act of 1939

(*e*) The words "or has at any time applied" in sub section (7) and the proviso to the same sub-section were added by section 20 of Act VI of 1946

2 Object of the section —The object of the section seems to be to clothe the nominee with the power to receive the money under the policy from the insurer without prejudice to the decision of any question of title thereto, as a nomination, as provided in this section, in respect of a policy of life insurance confers no right on the nominee during the lifetime of the assured It confers on him a bare right to collect the policy-money on the death of the assured and to give the insurer a good discharge The nominee does not become the owner of the money payable under the policy and he is liable to make it over to the legal representatives of the assured [1]

3 Scope —The section presents a complete code for nomination by a policy holder It prescribes two methods of nomination, *viz*, either in the text of the policy itself or by an endorsement thereon with notice to the insurer There is one limitation prescribed for making the nomination in that such nomination can be cancelled at any time before the policy matures for payment When a nomination is to be made in respect of a policy, the policy-holder can do so while effecting the policy or at any time before the policy

1 *Sar Jiri Amma v Neelakanta Pillai* I L R 576 : 1950 Ker L J 1416 1960 Ker (1960) Ker 1306 : (1960) 2 Ker L R. L T 1319 : 1961 Ker 126 (F B)

matures for payment A nomination made either in the text of the policy or by endorsement thereon can, at any time, be cancelled or changed by the assured at his pleasure but such cancellation or change in the nomination must be made before the policy matures for payment and notice of such cancellation or change in the nomination must be given to the insurer Moreover, a nomination will automatically stand cancelled when the policy in respect of which the nomination is made is transferred or assigned in terms of section 38 of the Act

The section also imposes certain duties on the insurer in respect of the nomination He must furnish to the policy-holder a written acknowledgment evidencing recording of nomination or any change thereof in his office He should also pay the policy money when the policy matures for payment either to the policy holder or his heirs or his legal representatives, or the holder of a succession certificate, as the case may be where the nominee or if there are more nominees than one, all the nominees die before the policy matures for payment But where the nominee or nominees survive the person whose life is insured the insurer should pay the policy-money to the survivor or survivors, as the case may be Further, the insurer has been given the protection in case he pays the policy-money *bona fide* to any nominee whose name is recorded as such in his office even though the policy-holder has cancelled or changed the nomination in favour of another person when no notice of such cancellation or change has been recorded in his office The insurer has also been given the option to charge a fee not exceeding one rupee for registering any cancellation or change in the nomination

4 **Applicability** —The provisions of this section will not apply to a policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (III of 1874) applies or has at any time applied subject to the provisions made in the proviso of sub-section (7) of this section [1] The section shall also apply to the Life Insurance Corporation of India

5 **Nominee and his legal position** —Where a person is named in the proposal form for whose benefit the insurance is effected and the insurer stipulates in the policy to pay the assured sum to that named person in case of death of the assured, such named person is generally known as the nominee But by merely naming a person in the document unless that document purports to create a trust in that person's favour he cannot claim any benefit out of the contract to which he is neither a party nor a privy As *A* and *B* by their contract cannot impose any liability upon *C*, likewise *C* cannot give a valid discharge of any liability accrued due on either of them So the legal position of a nominee is in no way better than *C* so much so that he cannot have a right to sue the insurer for the insurance money The only person who can give a valid discharge and can consequently sue for the assured sum is the legal representative of the insured This principle is well illustrated in the case of *Cleaver* v *Mutual Reserve Fund Life Association*[2], where a husband effected a policy on his own life under which the sum assured was expressed to be payable to his wife living at his death but otherwise to his legal personal representatives, Lord Esher, M R , said, ' What would be the legal effect of making the money payable to the wife ? I do not think that the defendants could have any right to follow the money they were bound to pay and consider how the executors might apply it It does not seem to me that, apart from the statute, such a policy would create any trust in favour of the wife James Maybrick (the husband) might have altered the destination of the money at any time and

1 *See* Note 12 *infra*

2 (1892) 1 Q. B 147

might have dealt with it by will or settlement" Fry, L J, said, "He was, independently of the statute, a stranger to the contract, it might have been put an end to by the contracting parties without her consent, and breach of it would have given her no cause of action against any one"

But a contrary view was held by Joyce, J, in *Re a Policy No 6402 of the Scottish Equitable Assurance Society*[1], namely, that the legal personal representative of the person in whose name the policy had been taken out was the person entitled to receive the money at law though in equity the money belonged to the legal personal representatives of the insured To this effect was also the case of *Re Davies*[2] The view of Joyce, J, was not followed in *Re Englebach's Estate, Tibbets* v *Englebach*[3] In this case a father effected a policy expressed to be payable to his daughter if she should survive until 3rd February, 1923 The daughter did survive the specified date It was held that the policy-money belonged to the executors of the father Romer, J said, "the daughter could, of course, successfully claim these monies if she had, at the death of the testator, a legal right to them, that is to say, right at law to recover the moneys from the society, because, although that legal right might have been given to her purely voluntarily by her father still there would be no resulting trust in favour of the father, seeing that there would be a presumption of advancement" The only other ground upon which the daughter could claim those moneys as against the executors of her father would be that the father in some way constituted himself a trustee for the daughter of the policy and of the moneys payable thereunder[4] In the case of *Re Gordon*[5] the question arose whether an officer's widow was entitled to retain a lump sum payable on his death from a fund of the society for the benefit of widows of the Royal Regiment of Artillery and on the interpretation of the society's rules it was held that it constituted a trust in her favour So also in the case of *Re Webb*[6], where a father took out a policy "on behalf and for the benefit" of his children it was held that the terms of the policy made him a trustee, although the words "on trust" or 'as trustee' were not actually used Again, in *Brown* v *Brown*[7], Wallington, J said that a husband could settle a policy on his wife without creating a trust, and apart from section 11 of the Married Women's Property Act, 1882 But in *Re Sinclair's Policy*[8] where *A* took out an endowment policy expressly for the benefit of his godson but died before the policy matured, it was held that the policy formed part of his general estate and that the godson had no title to it[9] Similarly in *Re Foster*[10] where a father insured his son's life and paid the premiums, and after his death the son continued to pay the premiums, it was held that, upon the son's death, the policy passed to the personal representatives of the father

In the state of these divided opinions the legal position of a nominee under the English law may be stated to be that a mere nomination does not by itself constitute the assured a trustee nor the nominee, who is a stranger to the contract, has any remedy at law as the property in such a policy passes to the personal representatives of the assured on his death notwithstanding the

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1 (1902) 1 Ch 282.
2 (1892) 3 Ch 61
3 (1924) 2 Ch 348
4 *See* also *Re Burgess's Policy* (1915) 85 L J Ch 273; the Law of Scotland in this respect differs from the English law *see Carmichael's* case 1920 S C (H L) 195; 57 S L R (H L) 547
5 (1910) Ch 851
6 (1911) Ch. 225
7 (1948) 2 All E R 778
8 (1938) 1 Ch 799
9 *See* also *Re Clay's Policy* (1937) 2 All E R. 548
10 (1938) 3 All E R. 357

nomination and hence he has no rights whatsoever [1] But exceptions to above general rule may be noted as follows

(*a*) where the nomination amounts to a declaration of trust[2],

(*b*) where the assured takes out the policy as the agent of the nominee[3],

(*c*) where the nomination is made under section 11 of the Married Women's Property Act, 1882[4],

(*d*) where the nomination is made under section 56 of the Friendly Societies Act, 1896 [5]

Before the Insurance Act, 1938, came to be enacted the position of a nominee under the Indian law was that postulated in the cases of *Shanker* v *Uma Bai*[6], *Nadir Shaw* v *Times of India Employees Death Benefit Fund*[7], *Oriental Govt Security Life Assurance Ltd* v *Vanteddu Ammraju*,[8] *Eshani Dasi* v *Gopal Ch De*,[9] and *Krishna Lal* v *Promila Bala* [10] These cases following *Cleaver's* case (*supra*) postulated that a person simply nominated by an assured in his policy of life insurance for receiving the money due under it had no trust created in his favour and could not sue on the contract The money payable under the policy, therefore, did not belong to such nominee but formed part of the assets of the estate left by the deceased In *Krishna Lal's* case, Rankin, C J (as his Lordship then was) observed thus 'Clause (2) of section 2 of the Contract Act widens the definition of consideration so as to enable a party to a contract to enforce the same in India in certain cases in which the English Law would regard that party as the recipient of a purely voluntary promise and would refuse him a right of action on the ground *nudam factum* Not only however is there nothing in section 2 to encourage the idea that contracts can be enforced by a person who is not a party to the contract but this notion is rigidly excluded by the definition of promisor and promisee" In this connection two other cases need mention, namely, of *Gresham Life Insurance Society Ltd* v *Collector of Etawah*[11] and *Matin* v *Mohamed Matin* [12] In the former there was a contract with a proposer for life insurance that the company would pay the money to him or to his assign or to his executor, or administrator, and it was held that an agreement that the money under the policy would be paid only to the assured or to his assign or his executor or administrator was a good contract which must bind not only the assured but also any body claiming title under him In the latter case a Mahomedan lady effected an insurance on her life and her step-son was mentioned as the person to whom the insurance money was to be given On a contest between the husband who supplied the premia for the insurance and the-step son it was held that the policy money belonged to the step-son and not to the husband

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1 See *Re Engelbach's Estate Re Burgess's Policy supra Re Schebsman* (1944) 1 Ch 83 *Green* v *Russel* (1959) 2 Q B 226 C A *Bowskill* v *Dawson* (*No* 2) (1955) 1 Q B 13 *Dalton* v *I R C* (1958) T R 45

2 See *Re Webb supra*, *Pedder* v *Mosley* (1862) 31 Beav 159, *Re Fearn*, (1937) 1 Ch 306

3 *Re Scottish Equitable Life Policy* 6402 *Re Davies supra* see also *Re Slattery* (1917) 2 Ir R 278 where *Re Scottish Equitable Life Policy* 6402 had been criticised

4 See *Re Seyton* (1887) 34 Ch D 511, *Re Davies Policy* (1892) 1 Ch 90, *Re Browne's Policy* (1903) 1 Ch 188, *Re Parker's Policies* (1906) 1 Ch 526

5 *See* S 56 of the said Act as amended by Friendly Societies Act 1955 S 5, *see* also *Bennett* v *Slater* (1899) 1 Q B 45, *Griffiths* v *Eccles Provident* (1911) 2 K B 275

6 37 Bom. 471

7 (1909) 33 Bom L R 720

8 35 Mad 162

9 18 C W N 1335

10 52 C W N 634 55 Cal 1315 1928 Cal 518

11 (1909) 31 All 343

12 69 I C 788

The legal position of a nominee seems to have not been changed since the Insurance Act, 1938, came into force except to the extent provided in this section, *i e* section 39 of the said Act It can well be illustrated from the case of *Mudaliar, D M* v *Indian Insurance and Banking Corporation* [1] In that case *A* had taken out two life insurance policies for Rs 5,000 each in an insurance company, *A* had become indebted to a bank, which instituted a suit against *A* and attached these policies before judgment and later on obtained a decree *A* died His wife who had been nominated as the person entitled to receive the moneys due under the policies in the event of his death, also died Her daughter filed a claim petition that the moneys due under the policies had become the assets of her mother on the death of *A* and they were not liable to satisfy the decree debt, it was held that the nomination could only be construed as a testament which would be subject to all the liabilities which the assured had to discharge and that the claim of the daughter deserved to be negatived In the same case the principle is stated to be that so far as nomination is concerned there is no appreciable difference between the English and American law on the one hand and what obtains in India According to English Law, the payee or the nominee is nothing more than an agent to receive the money, which money remains the property of the assured and at his disposal during his lifetime and on his death forms part of the estate The result is that the payee or the nominee takes no beneficial interest in it But there is an exception to the above rule In case of nomination of a wife as the payee under a policy of life insurance, if the construction placed upon the declaration is that a trust has been created under the provisions of the Married Women's Property Act, the beneficiary takes the assured amount free of all the liabilities of the insured and if it is construed as a mere nomination, the nominee has no more right than to receive the amount subject to all the liabilities as if the disposition was by means of a testamentary instrument [2]

6 **Policy holder may nominate, sub section (1)** —Sub section (1) of this section confers discretion on the policy holder who has effected an insurance on his own life to nominate a person or persons to whom the money secured by such policy must be paid in the event of his death Such nomination can be made at any time but not beyond the time when the said policy matures for payment But when *A* effects an insurance on the life of another upon whose life he has insurable interest he cannot make any nomination in that policy One must make nomination, if he so desires, only on the insurance of his own life Such nomination, however, does not confer any right on the nominee during the lifetime of the assured It confers on him a bare right to collect the policy-money on the death of the assured and to give a good discharge to the insurance company [3] as the phrase the person or persons to whom the money secured by the policy shall be paid in the event of his death" indicates that as between the insured and the insurer the contract is that the policy money must be paid to the nominee in the event of his death, and consequently a nominee receiving the policy-money as per contract between them can give a valid discharge to the insurance company in respect of the money which had accrued due on the policy

7 **A minor may be nominated as a nominee, proviso to sub-section (1)** —There is no bar to a minor being nominated as the person to whom the money secured by the policy shall be paid in 'the event of the death' o the assured When a policy-holder so chooses to nominate a minor as his nom nee to whom the policy-money shall be paid it shall, at the same time,

1 (1956) 2 M L J 476 : 69 M L W 724 1957 Mad. 115

2 *See also Sarojini Amma* v *Neelakanta Pillai supra*; *Rambakar* v *Gangadhar* 1956 Cal 275 *Amardas* v *Sri Dada Dayalu Maharabha* 1953 All 721

3 *Sarojini Amma* v *Neelakanta Pillai* 1961 Ker 126 F B cited *supra*

be lawful for him to appoint in the prescribed manner any person to receive the money payable under his policy on the happening of his death during the minority of the nominee This is what is provided in proviso to sub section (1) These provisions are necessary because of the fact that a minor to whom the policy-money shall have to be paid in the event of the death of the assured, cannot give a valid discharge to the insurer The person so appointed to receive the money from the insurer for and on behalf of the minor nominee should be treated, to all intents and purposes as an *ad hoc* guardian of the minor if he be neither a *de facto* nor a *de jure* guardian

The appointment of such person to receive the insurance money during the minority of the nominee should be communicated to the insurer and at the same time the policy-holder should also forward the documents relating to such appointment which should also be endorsed by the appointee to show his consent thereto But any nomination made before the commencement of the Insurance (Amendment) Act, 1950, and subsisting at such commencement, the appointment may be made and communicated in the aforesaid manner within six months after such commencement The appointment of such person to receive the insurance money on behalf of the minor nominee if it is not incorporated in the text of the policy itself, must be made by an endorsement on the policy in order that the said appointment may be effectual Such appointment again can also be cancelled or changed by an endorsement or further endorsement as the case may be, and communicated to the insurer, but this cancellation of appointment or any change therein should be made before the policy matures for payment [1]

8 **Nomination how to be effected, its change, sub section (2) —** Nomination can be made in two ways, namely, (i) by incorporating such nomination in the text of the policy itself, *i e*, showing such nomination in the body of the policy, and (ii) by an endorsement on the policy In the latter case the *factum* of nomination must be communicated to the insurer who, in his turn must register it in the records relating to the policy, *i e*,, it must be entered in the register or record of policies which the insurer has to maintain under section 14 of the Act [2] Unless the notice of nomination is given as aforesaid the nomination shall not be effectual

The policy holder after making the nomination as aforesaid has the right to cancel or change the said nomination at his pleasure at any time before the policy matures for payment The cancellation or change in the nomination has to be made by an endorsement or a further endorsement or by a will, as the case may be But even in the case of cancellation or change in the nomination, notice in writing of any such cancellation or change has to be delivered to the insurer In the absence of such notice being given to the insurer the latter cannot be made liable for any payment being made *bona fide* to a nominee mentioned in the text of the policy or registered in records of the insurer under the said policy [3]

9 **Insurer to furnish written acknowledgment, sub-section (3) —** The provisions of sub-section (2) are mandatory When a nomination is made by an endorsement on the policy and the *factum* of such nomination is communicated to the insurer for its being registered by him in his register or record of policies according to section 14 or when any cancellation or change thereof is made and also communicated to him by a notice in writing according to sub-section (2) it is the duty of the insurer to furnish to the policy holder a written acknowledgment acknowledging to have so registered such nomination

1 *See* Rule 32 of the Insurance Rules, 1939
2. *See* Notes 3 and 7 under S 14 *supra*
3 *See* also Note 5 under S 38 *supra*

or cancellation or change thereof, as the case may be But when egistering any cancellation or change in the nomination the insurer has the discretion to charge a fee not exceeding one rupee for each registration to be made of such cancellation or change of which notice in writing is given to him The insurer cannot charge any fee for registering any nomination made by endorsement on the policy for the first time

10 Automatic cancellation of nomination, exception, sub-section (4) —The provisions of sub-section (4) are also mandatory When a policy is transferred or assigned according to provisions of section 38, any nomination made in that policy prior to such transfer or assignment automatically stands cancelled For the cancellation of the nomination in case of transfer or assignment the policy-holder need not do so by endorsement or a further endorsement or by a will These provisions further indicate that a nominee has no right whatsoever over the policy wherein he has been nominated to receive the policy money on the death of the assured In spite of the nomination the policy-holder retains all his rights to deal with the policy in any way he pleases during his lifetime His rights are at par with the rights of a testator making testamentary disposition of his property

But an exception has been provided by proviso to this sub section in case where the assignment of the policy is made to the insurer who has granted a loan on the security of the policy within its surrender value or when the policy is re-assigned on re-payment of the loan In such cases the nomination made in the policy shall not automatically stand cancelled but such nomination will remain in full force and virtue in spite of the assignment or re-assignment subject to this that the rights of the nominee shall be affected only to the extent of the insurer's interest in the policy, that is to say the insurer will be bound to pay the nominee the policy money in the event of the death of the assured less the amount which would be found due from the policy-holder on account of any loan advanced to him

11 On maturity policy money payable to whom, sub-sections (5) and (6) —Sub-sections (5) and (6) lay down the general rules regarding the person or persons to whom the amount secured by the policy shall be payable when the policy matures for payment during the lifetime of the holder of the policy on his own life and when it matures in the event of his death

The general rules are as follows

(i) where the policy matures for payment during the lifetime of the person whose life is insured the amount secured by the policy shall by payable to the policy holder ,

(ii) where the policy matures for payment in the event of the death of the person whose life is insured, the amount secured by the policy shall be payable—

(a) to the nominee or nominees if there are more than one, if he or they survive the person whose life is insured ,

(b) to the policy holder s heirs or legal representatives or the holder of a succession certificate, as the case may be where the nominee or the nominees if there are more than one, and he or all of them die before the policy matures for payment, i e , where the nominee or nominees, as the case may be dies or die during the lifetime of the person whose life is insured [1]

1 See *Kasari Devi* v *Dharma Devi* 1962 All L J 265 : 1962 All 355 where it was held that heirs of nominee and not of assured entitled to policy money on maturation of policy where the nominee dies after such maturation but before payment of policy money

A Heirs —The Hindu Succession Act, 1956 (XXX of 1956) which came into force on 17th June, 1956, has now codified the law of intestate succession among Hindus In the said Act, the term "heir" has been defined to mean any person, male or female, who is entitled to succeed to the property of an intestate under that Act [1] Section 8 of the said Act groups the heirs of a male intestate into four categories and lays down the rule of devolution as follows

(*a*) firstly, upon the heirs, being the relatives specified in Class I of the Schedule specified in that Act, (*b*) secondly, on failure of heirs of Class I upon the heirs, being relatives specified in Class II of that Schedule, (*c*) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased and (*d*) lastly, if there is no agnate, then upon the cognates of the deceased

Class I of the Schedule enumerates twelve heirs including the mother and the daughter and some more descendants who are so recognised by reference to the principle of representation All these heirs inherit simultaneously Class II of the Schedule again groups the heirs mentioned therein into nine categories beginning from father in item (I) and ending at mother s brother, mother's sister in item (IX) The order of succession amongst the heirs in Class II is that entry in the first item to be preferred to one in the second entry and so on, but between the heirs specified in any one entry they share equally The order of succession among agnates or cognates is to be determined in accordance with the rules of preference as laid down in Rules 1 to 3 of section 12 of the said Act Even a child *en ventre sa mere* has the same rights to inherit as if he or she had been born before the death of the intestate [2]

Section 15 of the said Act groups the heirs of a female intestate into five categories *viz* (*a*) firstly, the sons and daughters (including the children of any predeceased son or daughter) and the husband (*b*) secondly, the heirs of the husband (*c*) thirdly, the mother and father, (*d*) fourthly, the heirs of the father, and (*e*) lastly, the heirs of the mother But when the female dies without leaving any issue, (*i*) the property inherited by her from father or mother will devolve upon the heirs of the father and (*ii*) the property inherited by her from her husband or father-in law will devolve upon the heirs of the husband The order of succession amongst the heirs is that those in entry (*a*) are preferred to those in entry (*b*) and so on

The Muhammadans are divided into two sects, namely, the Sunnis and the Shias The Sunni Muhammadans of India belong principally to the Hanafi School while the Shias belong to the Shia School According to the Hanafi School of Inheritance there are three classes of heirs namely, (*i*) sharers (*ii*) residuaries and (*iii*) distant kindred, while under the Shia Law of Inheritance there are two groups of heirs, namely, (*i*) heirs by consanguinity *i e*, blood relations and (*ii*) heirs by marriage, that is, husband and wife Of the heirs by consanguinity there are three classes, *viz*, (1) (*a*) parents (*b*) children and other lineal descendants how low soever, (2) (*a*) grandparents how high soever (true as well as false) (*b*) brothers and sisters and their descendants how low soever and (3) (*a*) paternal and (*b*) maternal, uncles and aunts of the deceased and of his parents and grandparents how low soever and their descendants how low soever Of these three classes of heirs the first excludes the second from the inheritance and so on but the heirs of the two sections of each class succeed together, the nearer degree in each section excluding the more remote in that section Under the Hanafi Law of Inheritance 'sharers' are those who are

1 *See* S 3 (*f*) of the said Act 2. *See* S 20 of the said Act

entitled to a prescribed share of the inheritance, "residuaries" are those who take no prescribed share but succeed to the residue after the claims of sharers are satisfied, and 'distant kindred' are those relations by blood who are neither sharers nor residuaries Thus father, true grandfather, mother, true grand mother and uterine brother or sister are sharers they each having 1/6th definite share, husband and wife are sharers, they having respectively 1/4th and 1/8th share, so also daughter and son s daughter how low soever, full sister and con sanguine sister are sharers, they each having 1/2 share Amongst the residuaries are the descendants, namely son and son s son, ascendants *viz* , father and true grandfather how low soever , descendants of father, *viz* , brother or sister whether full or consanguine etc and descendants of true grandfather how low soever, *viz* , uncle whether full or consanguine and their son or grandson [1]

The succession of the following class of persons is governed by the Indian Succession Act (XXXIX of 1925)

(*a*) Europeans by birth or descent domiciled in India,

(*b*) Eurasians, *i e* , Christians of mixed European and Native blood,

(*c*) Jews,[2]

(*d*) Armenians,[3]

(*e*) Parsees,[4]

(*f*) Native Christians, *i e* converts to Christianity and their Christian descendants,[5]

(*g*) Any person professing the Hindu Buddhist, Sikh or Jaina religion but marrying under the Special Marriage Act (III of 1872) as amended by Act XXX of 1923 or under the Special Marriage Act, 1954 (XLIII of 1954) [6]

B - Legal Representatives —In the Code of Civil Procedure (Act V of 1908), the expression 'legal representative" has been defined to mean a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued [7] Thus, universal legatees under a will are legal representatives [8] so also a transferee *pendente lite* [9] under section 61 of the Madras Court of Wards Act 1902 and not its manager is the legal representative of the deceased so long as it represents the estate of the deceased ward,[10] but a true owner is not the legal representative of a *benamidar* who claimed title in himself, but when the latter sues in a representative capacity a true owner can come in as his legal representative on the death of the *benamidar*,[11] so also under the Hindu Women s Rights to Property Act 1937, the widow represents the deceased husband, her sons could not

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1 For , full discussion on the subject *see* Mulla s Mahomedan Law 15th Ed pp 25 to 112

2 *See Sara Lara In re* 58 Cal 761 : 1931 Cal 560

3 *See Greeny v Cochrane* 8 M I A 275

4 *See* Chapter III of the said Act

5 *Tetia v Sellama* 10 Mad 69 *Degree v Pocet* : 19 Bom 783

6 *See* S 21 of the Act of 1872 and S 21 of the Act of 1954

7 *See* S 2 (11) of the said Act

8 *Santha v Natarajan Pillai* (1960) 1 M L J 318

9 *B B Banjara v Bal Krishna* 1960 M P L J 207 : 1960 Jab L J 404 : 1960 Madh Pra 198 *Palt v Varghese* 1956 Trav Co 147 (F B)

10 *F F Raja v K Nara s Pillai* 1960 Ker 288 *Nagamthamma Naidu v Gangiah Naidu* (1961) 2 M L J 10 : 1961 Mad. 376

represent her particular interest which vested in her on her husband's death [1] 'Representatives' or 'legal or personal representatives' *prima facie* mean executors or administrators [2]

C "The holder of a succession certificate" —The expression "the holder of a succession certificate" means the person in whose favour the District Judge or the District Delegate has granted a certificate under Part X of the Indian Succession Act (XXXIX of 1925) The enquiry contemplated under the said part of the said Act for grant of a certificate is only a summary enquiry If the court finds that the applicant has made out a *prima facie* title to the certificate, it grants its application The title to be investigated in such an application is not the title to the estate of the deceased person but the title to the certificate Where there are rival claimants each claiming the effects of the deceased person, such a title cannot be determined unless the question of title to the estate itself is to some extent at least gone into This question of title must be gone into before it can be held who are entitled to the certificate and in what proportion in order to collect the debts due to the deceased The Act permits the grant of two separate certificates each relating to a part of the same debt, but it is not permissible to grant two or more certificates for the same debt or portion of a debt A joint certificate to two or more rival claimants should not be normally granted But it is not illegal to grant a joint certificate to two or more rival claimants if the particular circumstances of the case warrant the same *A fortiori* it is not illegal where the claimants are not rival claimants and they consent to its being granted jointly to them all [3] The exact character of the applicant's claim in an application for succession certificate was not intended to be litigated and what was sought to be determined was only whether the applicant was the proper person or a proper person to be clothed with the representative character The Act is thus not intended to afford litigant parties an opportunity of litigating contested questions of title to property [4]

The succession certificate gives protection to the debtors who have paid their dues to the holder of the certificate even in ignorance of its suppression of invalidity and the payment thus made shall be held good against claims under any other certificate But although the certificate thus obtained is conclusive against the debtor and indemnifies him as regards all payments made to or dealings had in good faith in respect of such debts with the person holding the certificate, that would not stand as a bar in any civil suit brought by the real heir against the succession certificate holder [5] A person claiming succession under the will either as an executor or a legatee has to obtain a probate or letters of administration before a succession certificate can be granted to him [6] On the death of an applicant for a succession certificate the proceeding lapses and there can be no substitution of the heirs or the alleged heirs of the applicant [7] A person who is granted certificate under the Act acquires conclusive title to recover the debts due to the deceased and if anybody refuses to pay the debts to him he acts wrongly and as such must pay interest [8]

1 *Shivraj Singh* v *Gaurishankar Baldeo Prasad* 1960 M P C 454 1961 Madh Pra 147

2 See *Re Best's Settlement* (1874) 18 Eq 686, *Stockdale* v *Nicholson* L R 4 Eq 359

3 *Poppammal In re* 70 M L W 907 but see *Syed Ahsan Shc* v *Mst Sayeda Begum* 1956 Pat L R III where it has been said that joint certificate to recover debt cannot be granted

4 *Ammini Ammal* v *Lakshmi* I L R (1957) Ker 390 1957 Ker 90

5 *Raina Bai* v *Makhan Singh* (1958) 1 Andh W R 55

6 *Kesar Singh Sant Singh* v *Smt Tej Kaur*, 63 Punj L R 473 1961 Punj 506

7 *Deo Kumar Singh* v *Kailash Singh* 1961 B L J R 108 1961 Pat 304

8 *Oriental Government Security Life Assurance Co* v *Vanitadu Ammraju* (1911) 1 M W N 276 10 I C 293 *Iswarmal* v *Nichomal*, 1931 Sind 81

D Policy holder —See Note 20 under section 2, *supra*

12 **Policy under the Married Women's Property Act, exemption from the operation of this section, sub section (7)** —Sub-section (7) of this section provides that any policy of life insurance to which section 6 of the Married Women's Property Act, 1874 (III of 1874) applies or has at any time applied, it will not come within the purview of the provisions of this section, except to the extent provided in proviso to the said sub-section

Section 6 of the Married Women's Property Act 1874, as amended by Act XIII of 1923 *inter alia* provides that a policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife or of his wife and children, or any of them according to the interest so expressed, and shall not, as long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate These provisions have introduced a a departure from the general rule as laid down in this section, namely, that when a married man has effected an insurance on his own life for the benefit of wife and children or any of them the latter has got the right to claim the benefit thereunder even though they are not parties to the insurance contract and a trust is to be presumed in favour of them although the policy has not been settled or declared in the form of a regular trust But these provisions apply only to policies of life insurance and not to capital redemption assurances and deferred assurances for children

The decisions in *Shankar Vishvanath* v *Umabai*,[1] *Eshani Dasi* v *Gopal Chandra*[2] *Oriental Govt Security Life Assurance, Ltd* v *Vanteddu Ammraju*[3] *Krishna Lal Sadhu* v *Promila Bala*[4] are no longer law because of the ammendment made to the Married Women s Property Act, 1874 by Act XIII of 1923 is applying the provisions of the said Act to Hindus, Muhammadans, Sikhs or Jains with respect of policies effected in Madras after 31st December, 1931 and in any other part of (British) India after 1st April 1923 See also the cases of *Balamba* v *Krishnayya*,[5] *National Insurance Co* v *Seethammal*,[6] and *(S M) Enayatulla Saheb* v *(S A K) Jeelani Saheb*[7] where some difference in view cropped up regarding the applicability of the provisions of the M W P Act In *Daw Yu* v *Sun Life Assurance Co of Canada*,[8] it has been observed that the Buddhists cannot take advantage of the said Act because of the fact that section 6 (2) of the M W P Act in its amendment by Act XIII of 1923 did not mention the Buddhists to whom the said Act should apply

(i) *Section 6 (1) M W P Act* vis a-vis *section 39, Insurance Act* —Section 6 (1) of the M W P Act clearly shows that the policy has to be effected for the benefit of the wife The making of a subsequent nomination in favour of the wife is merely authorising her to receive the money and is not the "effecting" of a policy for her benefit A policy cannot be effected twice Where the wife is not made beneficiary *ab initio* the policy is not effected by the husband for the benefit of his wife within section 6 (1) of the M W P Act and the mere fact that he made a subsequent nomination such as he was empowered to make under section 39 of the Insurance Act does not make the policy a policy to which section 6 (1) applies because of such omination Section 39 of the Insurance Act and section 6 (1) of the M W P c tare not complementary and the right of nomination which is bestowed

1 37 Bom 471
2 18 C. W N 1335
3 35 Mad 162.
4 32 C. W N 634
5 37 Mad 483 (F B)
6 65 M L J 415
7 1942 Com Cas Ins 1
8 1935 Rang 211

on a policy-holder under section 39 of the Insurance Act cannot be read into section 6 (1) of the M W P Act so as to vary the clear intention of the latter Act If a trust is to be created later in favour of any person after the policy has been effected, then it cannot be created under section 6 (1) of the M W P Act but must be created as any other trust is created [1] Section 6 of the M W P Act does not apply to a nomination Hence a nomination in favour of the wife in an insurance, dated 3rd December, 1944, though prior to the amendment, is not governed by section 6 and the right which the wife gets as a nominee under the policy is subject to the discharge of any liability of her husband [2]

(ii) *Construction of policy under M W P Act* —For the construction of the policy under the M W P Act one should look to the policy itself and not to the Act Where two constructions are possible, one within and the other outside the powers of the Act, the former should be preferred to the latter [3] Where there is no apportionment of shares as between two or more persons designated, all of them will take in equal shares as joint tenants [4] Where the policy expresses that so and so person designated shall take such share or shares the person or persons designated will take the share or shares so expressed in the policy or by will or by deed [5]

The meaning of the expressions generally used in a policy under the said Act are summarised below—

(*a*) "for the benefit of his wife *B*," the expression means that *B* takes absolute vested interest in the policy as soon as it is issued and the whole proceeds thereof,[6]

(*b*) "for the benefit of his wife" without naming her, the expression means his widow, whether she be his wife living at the date of the policy or some future wife who shall survive him, but where there is none at the death of the assured, the representatives of the wife are not entitled to the money,[7]

(*c*) "for the benefit of his wife and children," the expression means his widow surviving him and those of his children by any marriage and also surviving him,[8]

(*d*) "his widow or widow and children," the expression means his widow at his death and those of his children by any marriage whenever born but surviving him,[9]

(*e*) "for the benefit of his wife *B* and the children of their marriage," the expression means the wife so named and surviving the husband and such children of their marriage whenever born as shall survive him,[10]

(*f*) "for the benefit of his wife or, if she be dead, between his children in equal proportions" the expression means the wife at that time

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1 *Shanti Devi* v *Ram Lal* 1958 A L J 262 1958 A W R (H C) 295 (1958) 28 Com Cas 625 : 1958 All 569

2. *Mahadara Brahmamma* v *Kandula Venkataramma Rao* (1957) 2 Andh W R 174 1957 Andh L T 431 1957 Andh Pra 757, *see also Mudaliar D M* v *Indian Insurance and Banking Corporation* 1957 Mad 115 *supra*

3 *Re Seyton*, (1887) 24 Ch D 5

4 *Re Browne's Policy* (1903) 1 Ch 188 *Re Griffith's Policy* (1909) 1 Ch 739 *Re Davies Policy Trust* (1892) 1 Ch. 90 *Re Seyton supra*

5 *Re Parker's Policies* (1906) 1 Ch 526

6 *Cousins* v *Sun Life Assurance Society*, (1933) Ch 126

7 *Re Collier* (1930) 2 Ch 37

8 *Re Browne's Policy, supra*, *Re Davies Poli cy Trusts supra*

9 *Re Parker's Policies, supra*

10 *Re Seyton, supra*

when the policy was effected (and no other) if she shall survive him or if she predeceases him, his children by any marriage and whenever born who shall survive him ,[1]

(*g*) "for the benefit of his wife in the event of her surviving him, and failing her for the benefit of his children born or to be born or any of them," the expression means the wife at the time when the policy was effected but if she shall predecease him, his children ,[2]

(*h*) "for the absolute benefit of the wife of the assured should the amount of insurance become payable during her lifetime failing which for the absolute benefit of such of the children of the assured as shall survive the assured," the expression means the wife when the policy was effected (and no other) if she is living at the maturity of the policy, if not, the children of the assured surviving him ,[3]

(*i*) "payable to the assured or his wife if the assured predeceases her," the expression means that the policy money is payable to the wife only on the contingency of the assured predeceasing her and hence it did not create any statutory trust in wife's favour during the lifetime of the assured ,[4]

(*j*) "the assured or his wife *A* if he predeceases her" constitutes a valid trust in favour of *A* under the M W P Act, 1874 ,[5]

(*k*) "for his wife and in case of her early death to himself" is a benefit within the M W P Act ,[6]

(*l*) "for the benefit of his wife in the event of his death before 28th May, 1938" creates a valid trust in favour of the wife when the husband died in 1924.[7]

13 Nomination made as under this section, non applicability of M W P Act, Proviso to sub section (7) —Proviso to sub section (7) makes an exception to the provisions contained in the said sub section that is the provisions of section 6 of the M W P Act shall not apply to a policy of life insurance where a nomination is made in favour of his wife or of his wife and children or any of them and is expressed as being made under section 39 whether or not it is so on the face of the policy

The proviso states that where a nomination in favour of the wife is expressed whether or not on the face of the policy as being made under section 39 of the Act, section 6, M W P Act shall not be deemed to apply or to have applied to the policy That means that the policy holder can elect to come either under nomination under sub-section (6) or under trust under sub-section (7) but if he does elect to nominate then such nomination takes it out of the trust under section 6, M W P Act.[8] In the instant case the nomination was

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1 *Re Griffith's Policy* (1909) 1 Ch 739
2 *Unreported Watson and others petitioners*
3 *Wood v James* (1954) 92 C. L. R. 142 under M W P Act 1892, S 11 West Australia.
4 *Lakshmibai Ammal v Guardian of India Insurance Co* 1937 Mad 645 but *see Bengal Insurance and Real Property Co Ltd v Velayammal* 1937 Mad. 571 ; *see Bowen v Bowen* (1948) 2 All E R 778
5 *Abharamavalli Ammal v Official Trustee of Madras* 55 Mad 171
6 *Re Fleetwood's Policy* (1925) 1 Ch 48 , *Re Parker's Policies* (1906) 1 Ch 526
7 *Re Ioakimidi's Policy* (1925) 1 Ch 403
8 *Ramballav v Gangadhar* 97 C L. J 119, *per* P B Mukharji, J at p 128

made in the following words, "I nominate my wife and my son-in law, the survivor or survivors, as the persons to receive the moneys under the above policy in the event of my prior death", *held*, the terms of nomination make the nomination *simpliciter* which comes under sub-section (6) of section 39 and not for the benefit of the wife within the meaning of section 6, M W P Act

"In order to create the statutory trust the policy must be expressed to be 'for the benefit of wife or children or husband or children' of the assured as the case may be Many policies purport on the face of them to be issued in terms of section 11 of the Married Women's Property Act, 1882, but it is not necessary that the statute should be mentioned in order to create a valid trust under its protection Neither is it necessary to use words expressly declaratory of a trust It is sufficient that the policy is expressed to be for the benefit of some person or persons who come within the class of those entitled to protection under the section [1]

COMMISSION AND REBATES AND LICENSING OF AGENTS

Prohibition of payment by way of commission or otherwise for procuring business

40 (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or a principal, chief or special agent

(1A) In this section and sections 40A, 41 and 43, references to an insurance agent shall be construed as including references to an individual soliciting or procuring insurance business exclusively in the territories which, immediately before the 1st November, 1956, were comprised in a Part B State notified in this behalf by the Central Government in the Official Gazette and holding a valid licence as an insurance agent under the law of that Part B State

(2) No insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent of the first year's premium payable on any policy or policies effected through him, and five per cent of a renewal premium payable on such a policy or, in the case of business of any other class, fifteen per cent of the premium

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent of the first year's premiums payable on any policy or policies effected through them and six per cent of the renewal premium payable on such policies

1 MacGillivray Insurance Law Vol 2 5th Ed p 693

Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950

(2A) Save as hereinafter provided, no insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him

Provided that where a policy of life insurance has lapsed, and it cannot under the terms and conditions applicable to it be revived without further medical examination of the person whose life was insured thereby, an insurer, after giving by notice in writing to the insurance agent through whom the policy was effected if such agent continues to be an agent of the insurer an opportunity to effect the revival of the policy within a time specified in the notice, being not less than one month from the date of receipt by him of the notice, may pay to another insurance agent who effects the revival of the policy an amount calculated at a rate not exceeding half the rate of commission at which the agent through whom the policy was effected would have been paid had the policy not lapsed, on the sum payable on revival of the policy on account of arrear premiums (excluding any interest on such arrear premiums), and also on the subsequent renewal premiums payable on the policy

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission to any person whether an insurance agent within the meaning of this Act or not, or to his representatives after his decease in respect of insurance business effected through him before the said date

SYNOPSIS

1 *Legislative changes*
2 *Object*
3 *Applicability*
4 *Scope*
5 *"Remuneration or reward whether by way of commission or otherwise, sub-section (1)*
(A) *Renewal commission*
(B) *"An insurance agent or a principal, chief or special agent"*
6 *"An insurance agent in Part B State, sub-section (1A)"*
7 *Amount of commission payable, sub-section (2)*
(A) *Agent authorised to appoint sub-agent whether an insurance agent?*
8 *Renewal commission in case of revival of lapsed policies, proviso to sub-section (2A)*

1 **Legislative changes**—(*a*) The words and figures "licensed under section 42" occurring in sub-section (1) were omitted by Act XI of 1939 and the words "or a principal, chief or special agent" occurring in the said sub-section were substituted by Act XLVII of 1950

(*b*) Sub-section (1-A) was inserted by Act VI of 1946, the words and figures (40A) occurring in the said sub-section were inserted by Act XLVII of 1950 and the words and figures "the territories which Part B State and "that Part B State' occurring in sub-section (1-A) were substituted by the Adaptation of Laws (No 5) Order, 1956

(*c*) The words and figures "licensed under section 42" occurring in sub-section (2) were omitted by Act XI of 1939 and the words "payable on such a policy" occurring in the said sub-section and the words "payable on such policies" occurring in the first proviso to the said sub section were inserted by Act VI of 1946, and the second proviso to that sub-section was inserted by Act XLVII of 1950

(*d*) Sub-section (2-A) was inserted by Act VI of 1946, and the words "if such agent continues to be an agent of the insurer" were inserted by Act XLVII of 1950,

(*e*) The words "any person, whether an insurance agent within the meaning of this Act or not" were substituted for the words "an insurance agent" by section 16 of Act XI of 1939

2 **Object**—The object of the section is to prohibit payment of or entering into contract to pay any remuneration or reward whether by way of commission or otherwise to any person except an insurance agent, or a principal, chief or special agent for his soliciting or procuring insurance business in India Such prohibition is to take effect after the expiry of six months from the commencement of the Insurance Act, *i e*, after 1st July, 1939

3 **Applicability**—The provisions of this section apply to all classes of insurance business in India, *i e*, the section applies to life, marine, fire or miscellaneous insurance business in India The applicability is not restricted to insurers only but any person whether insurer or not comes within the purview of this section The section has been applied to the Life Insurance Corporation of India

4 **Scope**—This section, after prohibiting payment of commission to any person other than four classes of agents mentioned therein for soliciting or procuring insurance business, prescribes the maximum rates of commission payable to those agents in respect of first year's premium and in respect of renewal premium in case of life insurance business and also the maximum rates payable in respect of other classes of insurance business In case of life insurance business further laxity is given in paying such commissions at higher rate specially to those companies who are comparatively young This section also saves certain contracts existing prior to 27th January 1937, in respect of payment of gratuities or renewal commission payable to any person or his legal representatives

5 **"Remuneration or reward whether by way of commission or otherwise", sub section (1)**—An agent is entitled to his remuneration for the performance of his act This remuneration may be settled by contract between the parties, *viz* the principal and agent But where there is no such contract payment for the performance of any act is not due to the

agent until the completion of such act [1] In the case of insurance agents the remuneration usually takes the form of a commission An agent is entitled to commission on the introduction of a customer provided such introduction is the efficient cause in bringing about the contract and not merely *causa sine qua non* So an agent loses his right to commission when he brings about the insurance only indirectly To entitle him to a commission he must show that he is the effective cause [2] An agent who is employed to do a particular thing cannot claim a commission for doing something similar to but not the precise thing [3] As an agent is not paid for his useless work it would be a prudent course for him not to undertake the work if he cannot succeed and he should know whether it will or not [4]

"The current of modern opinion is to the effect that those who bargain to receive a commission for introductions have a right to their commission as soon as they have completed their portion of the bargain irrespective of what may take place subsequently between the parties introduced "[5] The best evidence for an insurance agent to offer to entitle him to his commission is the agent's report bearing his signature But an agent merely signing the said report is not entitled to the commission when the policy was effected through the efforts of another agent Thus along with the said report he must also show that his efforts succeeded in inducing the person concerned to take out the policy with the insurer [6] So where the insurance policy is effected substantially through the efforts of an agent but the technical completion of the contract is brought about by another person the former alone is entitled to the commission The test in such cases is whose efforts were responsible for the proponent agreeing to effect the contract of insurance with the company in respect of the sum [7] But in the same case it has been said that an agent does not forfeit his right to commission merely because he is frank enough to admit that it was the efforts of the chief agent that were mainly responsible for securing the policy Again an insurance agent forfeits his right to commission if he takes bribe from a third person [8] The question as to whether an agent can sue his principal for rendition of accounts has been answered in the affirmative in *Ram Lal Kapur & Sons* v *Asian Commercial Assurance Co Ltd* [9]

(*A*) *Renewal commission* —Sometimes it is seen that insurance agents get commission on renewal premiums paid by the policy-holders This renewal commission is paid even after the termination of the agency Whether such a commission could be paid even after the termination of the agency will depend upon whether the principal contracted with the agent to pay such renewal commission, that is it will depend upon the construction of the contract[10] and when the insurer is a company, its articles of association must distinctly provide for the same, otherwise payment of such renewal commission may be *ultra vires* the company The general rule in this regard, is that an agent cannot claim commission after the termination of his agency To this an exception has been added namely where there is an express or implied contract that the agency should be continued for any period of time the principal must make compensation to the agent for any previous revocation of the agency without

1 *See* S 219 Indian Contract Act
2 *Nightingale* v *Persons* (1914) 2 K.B 621
3 *Toulmin* v *Muller* 58 L T 96
4 *Hill* v *Featherstanhaugh* 7 Bing 569
5 *Fisher* v *Drewett* 48 L J Ex 32
6 *Baba Satgur Das* v *Bombay Life Assurance Co Ltd* 1942 Com Cas (Ins) 104
7 *Balaram Panda* v *Gopinath Misra* I L R (1953) Cut 630 1954 Orissa 44
8 *Shipway* v *Broadwood* (1899) I Q. B 369
9 1933 Com Cas 66
10 *Levy* v *Goldhill* (1917) 2 Ch 297

any sufficient cause [1] It has been said that the duties of an insurance agent do not cease with the introduction of the customer but they continue in the claim of his renewal commission on his undertaking to induce the assured to pay the premiums as they fall due [2] The legal effect of such renewal commission has been considered in *Solomon* v *Bro unfield*[3], wherein it has been said that there is nothing inherently illegal to contract to pay commission to the agent upon all future premiums paid by the customers introduced by him It has also been said that where commission is payable after termination of the agency it may continue to be payable, after the death of the agent, to his executor [4] It is not necessary for an insurance agent to keep his insurance licence in force year after year by paying the insurance fee in order to earn the percentage on the renewal premia [5]

(*B*) *"An insurance agent or a principal, chief or special agent"* —*See* Note 4 under section 2, pages 15 to 20, *supra*

6 **"An insurance agent in Part B State", sub section (1-A)** —Sub-section (1-A) of this section extends the definition of an insurance agent in a Part B State to include an individual soliciting or procuring insurance business exclusively in a Part B State notified in this behalf by the Central Government in the official Gazette and holding a valid licence as an insurance agent under the law of that State Thus, according to this definition an insurance agent (*i*) must be soliciting or procuring insurance business exclusively in a Part B State, (*a*) there must be a notification in that behalf by the Central Government in the official Gazette , and (*ii*) must hold a valid licence as such under the law of that State This definition should hold good with respect to insurance agents mentioned not only in this section but also in sections 40A, 41 and 43, *post*

An insurance agent is ordinarily defined to be one whose business it is to represent an insurer for the purpose of obtaining p rsons to insure with that insurer, he being rewarded by a commission paid by the insurer he represents [6] These insurance agents are sometimes known as insurance brokers because they primarily establish privity between the insurer and the insured But a broker who effects an insurance with an underwriter is not his agent and is under no legal liability to him to use care or skill in effecting the insurance [7]

7 **Amount of commission payable, sub-section (2)** —Sub-section (2) provides the amount of commission payable to agents in respect of life and other classes of insurance business No insurer can pay to his agent a commission exceeding the limit prescribed under this sub-section nor can he contract with any agent to pay more than what is prescribed herein

The amount of commission payable to an insurance agent, in respect of life insurance business, is (*i*) 40 per cent of the first year s premium payable on any policy or policies effected through him and (*ii*) 5 per cent of a renewal premium on such a policy or policies, as the case may be In the case of business of any other class of insurance, such commission payable is 15 per cent of the premium The limits thus prescribed must in no case be exceeded except to the extent as follows

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1 *See* S 205 Indian Contract Act
2 *Empire of India Life Assurance Co Ltd* v *S Nonu Ayyar* 44 Mad 170 following *Admiralyan Rao* v *Empire of India Life Assurance Co* unreported decision of the same High Court
3 12 T I R 239
4 *Wilson* v *Harper* (1908) 2 Ch 370
5 *Oriental Government Security Assurance Co Ltd* v *Krishnamurti* I L R (1957) Mad 826 (1957) 1 M L J 192 1957 Mad 449
6 *See* Business Encyclopaedia and Legal Adviser Vol III p 179
7 *Empress Assurance Corporation* v *C T Bowring & Co* (1905) 11 Com Cas 107 , *Glasgow Assurance Corporation* v *William Symondson & Co* (1911) 104 L T 254

In the case of life insurance business only, insurers have been given the discretion to pay to their insurance agents, during the first ten years of their business, (*i*) a commission of 55 per cent of the first year's premium payable on any policy or policies effected through such agents, and (*ii*) a renewal commission of 6 per cent of the renewal premiums payable on such policy or policies

The second proviso to this sub-section has restricted the applicability of the provisions of that sub section to policies of life and general insurance, namely, the provisions of this sub-section will have no application (*i*) to any policy of life insurance issued after 31st December, 1950, and (*ii*) to any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950, that is, after 1st September, 1950 Specific provisions regarding payment of commission on such policies have been made in section 40A, *post* [1]

The prohibition contained in this sub section does not apply to a firm not licensed under section 42 of this Act, for a firm not licensed under section 42 of the Act cannot be regarded as an insurance agent within the meaning of this sub section [2]

(*A*) *Agent authorised to appoint sub-agent, whether an insurance agent* —When an agent is authorised to appoint a sub-agent, he is an insurance agent within the meaning of this section [3]

8 **Renewal commission in case of revival of lapsed policies, Proviso to sub-section (2 A)** —Sub-section (2-A) generally provides that no insurance agent shall be paid or contract to be paid by way of commission or as remuneration in any form any amount in respect of any policy not effected through him, that is to say, the general rule is that when any policy is effected not through an insurance agent the latter is not entitled to any commission thereon rather payment to him either as commission or as remuneration in any form is expressly prohibited But an exception has been provided in proviso to this sub-section

The exception lies in this that an insurer has the discretion to pay the renewal commission to another insurance agent who effects the revival of the policy that has lapsed and which in terms of the policy cannot be revived without further medical examination of the person whose life was insured under the policy The amount of commission payable to such agent who has not effected the policy but has only effected its revival must not exceed half the rate of commission at which the agent through whom the policy was effected could have been paid had the policy not lapsed, that is, the rate of commission must not exceed 2 $^1/_2$ per cent or 3 per cent as the case may be, on the sum payable on revival of the policy on account of arrear premiums excluding interest payable thereon Such agent will be entitled to the subsequent renewal premiums payable on the policy But before an insurer is justified to pay such commission to such an agent he must satisfy the following

The insurer must give notice in writing to the insurance agent who effected the policy if he still then continues to be an agent of the insurer with a view

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1 *See* Notes under S 40A *post*

2 *Ganeshdas Pamgotal* v *Bharat Insurance Co Ltd* 205 I C 201 : 1943 O W N 44 1943 Oudh 239

3 *Sukhraji* v *Oriental Government Security Life Assurance Co* 72 I A 315 : 50 C W N 73 (1945) 2 M L J 496 1946 A L J 261 I L R (1946) Bom 159 : 223 I C 15 1946 P C 6

to give him an opportunity to effect the revival of the said policy within a time to be specified in the said notice Such notice must not be less than one month from the date of the receipt thereof by him

9 **Contract existing prior to 27th January, 1937, sub-section (3) —** Sub-section (3) of this section saves all contracts relating to insurance agency existing prior to 27th January, 1937, whereby payment of gratuities or renewal commission to any person whether an insurance agent within the meaning of this Act or not or to his representatives after his decease is made But to be entitled to such commission or gratuities the insurance business must have been effected through such agent before 27th January, 1937

This sub-section as amended by Amendment Act 11 of 1939 removes the prohibition for payment of gratuities or renewal commission, under a contract existing prior to 27th January, 1937, not only against an insurance agent who must be licensed under section 42 but against other person [1] Section 44 of the Act is a counterpart of this section The former refers to only agreements made after the Act and agreements made prior to the Act are saved only to the extent specified in this sub section [2]

Prima facie the right of an agent to commission ceases on the termination of his employment except in cases in which the whole of the work necessary to earn the commission has been done by the agent before his employment ceases Where a good deal of work has to be done by the agents to prevent policies from lapsing the commission or renewal premium is not payable to the agent after the termination of his agency [3]

Limitation of expenditure on commission

40A (1) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950 and effected through an insurance agent, an amount exceeding—

(*a*) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium or where only one premium is payable on the policy, two per cent of that premium,

(*b*) where the policy grants a deferred annuity in consideration of more than one premium, seven and a half per cent of the first year's premium, and two per cent of each renewal premium, payable on the policy, and

(*c*) in any other case, thirty-five per cent of the first year's premium, seven and a half per cent of the second and third year's renewal premium and thereafter five per cent of each renewal premium, payable on the policy

1 *Ganeshdas Ramgopal v Bharat Insurance Co Ltd* 1943 Oudh 239 *supra* (1944) Bom 637 46 Bom L R 979; 1944 Bom. 168

2 *Sohrabji Dhunbhoy v Oriental Government Security Life Assurance Co , Ltd* , 1 L R

3 *Sohrabji v Oriental Government Assurance Co* 1946 P C 6,

Provided that in a case referred to in clause (*c*), an insurer, during the first ten years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, forty per cent of the first year's premium payable on the policy

(2) No person shall pay or contract to pay to a special agent, and no special agent shall receive or contract to receive, by way of commission or as remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

(*a*) in a case referred to in clause (*a*) of sub-section (1), one half per cent of the premium,

(*b*) in a case referred to in clause (*b*) of sub-section (1), two per cent of the first year's premium payable on the policy, and

(*c*) in a case referred to in clause (*c*) of sub-section (1), fifteen per cent of the first year's premium payable on the policy

Provided that in a case referred to in clause (*c*), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent of the first year's premium payable on the policy

(3) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through an insurance agent, an amount exceeding—

(*a*) where the policy relates to fire or miscellaneous insurance, fifteen per cent of the premium payable on the policy, and

(*b*) where the policy relates to marine insurance, ten per cent of the premium payable on the policy

(4) No person shall pay or contract to pay to a principal agent, and no principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent, an amount exceeding—

(*a*) in the case referred to in clause (*a*) of sub-section (3), twenty per cent of the premium payable on the policy, and

(*b*) in the case referred to in clause (*b*) of that sub-section, fifteen per cent of the policy,

less any commission payable to any insurance agent in respect of the said policy

Provided that the Central Government may in such circumstances and to such extent and for such period as may be specified, authorise the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which could otherwise have been performed by the insurer

(5) Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) shall be punishable with fine which may extend to one hundred rupees

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Commission payable to insurance agent in respect of life policy, sub-section (1)*
(*a*) *Renewal commission*
5 *Commission payable to a special agent in respect of life policy, sub-section (2)*
6 *Commission payable to an insurance agent in respect of policy of general insurance sub-section (3)*
7 *Commission payable to principal agent in respect of policy of general insurance, sub section (4)*
(*A*) *Power of the Central Government, proviso to sub-section (4)*
8 *Penalty for contravention, sub-section (5)*

1 **Legislative changes** —This section has been newly inserted by Act XLVII of 1950

2 **Object and scope** —The object of this section is to limit (expenditure on commissions payable to insurance agents, special agents and principal agents by prescribing the maximum amount therefor calculated on a percentage basis upon the premiums, after 31st December, 1950, in respect of life insurance business and after the commencement of the Insurance (Amendment) Act, 1950, in respect of general insurance business [1]

This section not only prohibits payment or any contract to pay by an insurer or not to an insurance agent, special agent and principal agent any commission or remuneration in any form exceeding the limits prescribed therein but it also prohibits receipt or any contract to receive by those classes of agents any commission or remuneration in any form exceeding the said limits Even the insurance agents have been subjected to a penalty of Rs 100 for contravention of any provisions of this section as are applicable to them

1 *See* Note 7 under S 40 *supra*

The section also prescribes the maximum limits of commission or remuneration which can be payable to (i) insurance agents in respect of any policy of life insurance or of any policy of general insurance, (ii) to special agents in respect of any policy of life insurance, and (iii) to principal agents in respect of any policy of general insurance. Certain privileges have been conferred on an insurer during the first ten years of his business to pay to an insurance agent or a special agent the amount of commission at a rate higher than the ordinary prescribed limits, but no such privileges have been conceded with regard to the principal agents except the ones who are principal-agents of foreign insurers and are carrying on the duties of the latter in their own offices In the case of these principal agents the Central Government has been conferred with the discretionary powers to authorise the payment of commission or remuneration exceeding the prescribed limits

3 **Applicability**.—The provisions of this section apply to insurers and the agents alike Three classes of agents come within the purview of this section, namely (i) insurance agents in respect of policies of life and general insurance businesses, (ii) special agents in respect of policies of life insurance, and (iii) principal agents in respect of policies of general insurance. The provisions of this section are, therefore applicable to (i) life insurance business and (ii) general insurance business, that is, (a) fire, (b) marine or (c) miscellaneous insurance business, whether carried on singly or in combination with one or more of them The section has also been applied to the Life Insurance Corporation of India

4 **Commission payable to insurance agent in respect of life policy, sub-section (1)**.—The maximum amount that can be payable to an insurance agent as commission or remuneration in respect of any policy of life insurance effected through him after 31st December 1950 has been laid down in this sub-section For this purpose policies of life insurance have been grouped into three categories, namely, (i) policy granting an immediate annuity or a deferred annuity in consideration of a single premium or one premium only, (ii) policy granting a deferred annuity in consideration of more than one premium, and (iii) policy not falling within (i) and (ii) categories and named as "in any other case"

The amount of commission payable must not exceed—

(a) 2 per cent of the single premium or one premium in category (i),

(b) 7½ per cent of the first year's premium in category (ii), and

(c) 35 per cent of the first year's premium in category (iii);

but the insurer has been given the discretion to pay, during the first ten years of his business, to an insurance agent, 40 per cent of the first year's premium payable on the policy

(A) *Renewal commission*.—The limit of the renewal commission payable to an insurance agent has also been provided, in this sub-section in respect of life policy effected through him after the said date in the manner as follows

(a) no renewal commission is payable in respect of category (i),

(b) 2 per cent of each renewal premium in respect of category (ii), and

(c) (i) 7½ per cent of the second and third years' renewal premium, and

(ii) 5 per cent of the fourth and subsequent years' renewal premium payable on the policy.

It may be noted that no renewal commission at a higher rate than stated above is admissible, unlike the one provided in proviso (i) to sub-section (2) of section 40, to an insurance agent during the first ten years of the business of the insurer.

5 **Commission payable to a special agent in respect of life policy, sub-section (2)**—The same principle has been adopted with regard to a special agent as the insurance agent in respect of policies of life insurance, i.e., such policies have been divided into the self-same three categories as stated above. The commission or remuneration payable to a special agent in respect of a policy of life insurance effected through him after the said date, i.e., 31st December, 1950, must not exceed—

(a) 4 per cent of the premium where it is a single one or where only one premium is payable in category (i) mentioned in Note 4,

(b) 2 per cent of the first year's premium when more than one premium is payable in category (ii) mentioned in Note 4, and

(c) 15 per cent of the first year's premium payable on the policy in respect of any other case as in category (iii) mentioned in Note 4, but an insurer has been given the discretion to pay, during the first ten years of his business, to a special agent a commission of 17½ per cent of the first year's premium payable on the policy.

It may be noted that unlike an insurance agent, a special agent is not entitled to any renewal commission.

6 **Commission payable to an insurance agent in respect of policy of general insurance, sub section (3)**—Sub-section (3) of this section fixes the maximum limits of commission or remuneration that can be paid to an insurance agent for any policy of general insurance effected through him after the commencement of the Insurance (Amendment) Act, 1950, i.e., from 1st September, 1950. The amount of such commission or remuneration must not exceed—

(a) 15 per cent of the premium payable on the policy when it relates to fire or miscellaneous insurance, i.e., insurance which is not principally or wholly of any kind or kinds such as, fire, marine, and life; and

(b) 10 per cent of the premium payable on the policy, when it relates to marine insurance.

7 **Commission payable to a principal agent in respect of policy of general insurance, sub-section (4)**—Sub-section (4) of this section fixes the maximum limits of commission or remuneration that can be paid to a principal agent for any policy of general insurance effected through him after the commencement of the Insurance (Amendment) Act, 1950, i.e., from 1st September, 1950. The amount of such commission or remuneration must not exceed—

(a) 20 per cent of the premium payable on the policy when it relates to fire or miscellaneous insurance; and

(b) 15 per cent of the policy when it relates to marine insurance.

But in both the cases in calculating the commission of the principal agent any commission payable to any insurance agent in respect of the said policy must be deducted

Thus in case of a policy of fire or miscellaneous insurance when a commission thereon of 15 per cent is paid to an insurance agent the principal agent becomes entitled to, in respect of the said policy, his commission of 5 per cent of the premium payable on the said policy, *i e*, 20 per cent — 15 per cent = 5 per cent Likewise, in case of a policy of marine insurance where a commission of 10 per cent is paid to an insurance agent, the principal agent's commission payable to him also becomes 5 per cent, *i e*, 15 per cent — 10 per cent = 5 per cent.

(A) Power of the Central Government, Proviso to sub-section (4) —Proviso to sub-section (4) has conferred discretionary powers on the Central Government to authorize payment of commission or remuneration to certain principal agent at a higher rate than the rate prescribed in this sub-section To be entitled to such a higher rate of commission or remuneration, (*i*) the principal agent must be a principal agent of an insurer incorporated or domiciled elsewhere than in India, and (*ii*) he must carry out and must have continuously carried out in his own office duties on behalf of the insurer which would otherwise have been performed by the insurer When authorising payment of such commission at a higher rate than what is prescribed in sub-section (4), the Central Government must specify therein (*a*) the circumstances, (*b*) the extent and (*c*) the period in respect of which such commission at a higher rate should be paid The proviso did not fix the limit of such rate but the fixing of such higher rate has been left to the discretion of the Central Government The object of investing the Central Government with such powers is obvious as the principal agent, apart from performing his duties as principal agent, has to perform the duties of the insurer which the latter would have, ordinarily, performed in pursuance of his business The expenditure which he would have incurred had he had his office was being made by the principal agent and the latter is compensated therefor by paying a commission at a rate higher than at the ordinary one prescribed in this sub-section

8 **Penalty for contravention, sub-section (5)** —Where the insurer contravenes any of the provisions contained in this section, that is, if he pays or contracts to pay any insurance agent special agent or principal agent any commission or remuneration at a rate higher than what is prescribed in this section he will be said to have acted in contravention of the section within the meaning of section 102 (1) of the Act and by virtue of the provisions contained in the latter section, the insurer shall be punishable with fine which may extend to one thousand rupees Similarly section 102 (1) of the Act also imposes the like penalty as the insurer upon any principal agent, chief agent, or special agent if he acts in contravention of the Act, *i e*, if the principal agent or the special agent receives or contracts to receive from any insurer any commission or remuneration at a higher rate than what is prescribed in this section such agent will be acting in contravention of this section and hence he shall also be punishable with fine which may extend to one thousand rupees But in section 102 (1) there is no provision for any penalty being imposed on any insurance agent if he acts in contravention of the Act Such penalty is provided in this sub-section when an insurance agent contravenes the provisions of sub-section (1) or sub-section (3), that is to say, if an insurance, agent receives or contracts to receive any commission or remuneration in respect of life or general insurance policies effected through him at a rate higher than what is prescribed in those sub-sections he shall be punishable with fine which may extend to one hundred rupees

40B (1) Every insurer transacting life insurance business in India shall furnish to the Controller, within such time as may be prescribed, statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading

Limitation of expenses of management in life insurance business

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section

(3) In respect of any statement mentioned in sub-section (1), the Controller may require that it shall be submitted to another actuary appointed by the insurer for the purpose and approved by the Controller, for certification by him, whether with or without modifications

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account—

(*a*) a certificate signed by the Chairman and two Directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses, and

(*b*) if the insurer is carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in respective revenue accounts

Explanation —In this section,—

(*a*) "Calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (*b*) of that sub-section;

(*b*) "Expenses of management" means all charges wherever incurred whether directly or indirectly, and includes—

(i) commission payments of all kinds,

(ii) any amount of expenses capitalised,

(iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed of the total premiums (less re-insurances) received during the year in respect of life insurance business transacted by him in India,

but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Furnishing of statements to the Controller sub-section* (1)
5 *Limits of expenses of management in any calendar year sub-section* (2)
6 *Powers of the Controller*
7 *What the insurer should incorporate in the Revenue account ? sub-section* (4)
8 *"Revenue account"* (*a*)
"Calendar year" or "year," meaning of (*A*)
"Expenses of management," meaning of—Explanation (*B*)

Legislative changes.—This section has also been inserted by Act XLVII of 1950.

Object and scope.—The object of this section is to limit the expenses of management of life insurance business and hence it provides a machinery by which the control of the over all expenses of the insurer carrying on life insurance business is made. The constitution of such machinery through which such controls are exercised is provided in [sections] 64A to 64T in Part II-A of the Act.

This section imposes certain duties upon every insurer transacting life insurance business in India. These duties are, (*i*) he shall furnish to the Controller statements of premiums currently used by him in regard to new business (*ii*) he shall not spend after 31st December, 1950, as expenses of management in any calendar year, an amount in excess of the prescribed limits, and (*iii*) he shall incorporate in the revenue account (*a*) a certificate to the

effect that all expenses of management regarding his life insurance business have been fully debited as expenses in the said account, and (*b*) an auditor's certificate in case of any other class of insurance business with life insurance business to the effect that all charges incurred in respect of those classes of insurance business have been fully debited in the respective revenue accounts

This section also empowers the Controller with regard to the statements submitted to him in that he has power to require that the said statements be submitted to another actuary appointed by the insurer and approved by him with a view to have a certificate from him whether with or without modifications

By adding an explanation to the section the expressions "calendar year" or "year" and the "expenses of management" have been stated as what they mean and include, so far as those expressions have been used in the section

3 **Applicability**—The provisions of this section are applicable primarily to all insurers transacting life insurance business in India but they are also applicable to those who transact any other class of insurance business along with life insurance business The section has also been applied to the Life Insurance Corporation of India with certain modifications

4 **Furnishing of statements to the Controller, sub-section (1)**—Sub-section (1) of this section has to be read along with Rule 17C of the Insurance Rules, 1939, made according to the provisions of the Insurance Act This sub-section enjoins on every insurer who transacts life insurance business in India to submit statements in the prescribed form within the prescribed time to the Controller Such statements must be certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading The statement of the bases of premiums shall be in Form V-H There are two categories of statement, *viz*, (i) statement of the bases of premiums currently used at the commencement of the Insurance (Amendment) Act, 1950, and (ii) statement on the bases of premiums to be newly introduced after the commencement of the said Amendment Act, 1950 The statement in category (i) has to be furnished to the Controller within six months from the commencement of the said Amendment Act and the statement in category (ii) has to be furnished before the premiums are offered by the insurer to prospective policyholders [1]

5 **Limits of expenses of management in any calendar year, sub-section (2)**—Sub-section (2) of this section prohibits every insurer transacting life insurance business in India, after 31st December, 1950, to spend as expenses of management in any calendar year an amount in excess of the prescribed limits The limits of such expenses have been prescribed in Rule 17D of the Insurance Rules 1939, and hence that rule has to be read along with this sub-section In prescribing these limits of expenses this sub-section further provides that regard must be given to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers The expenses of management in any calendar year must not exceed the aggregate sum of—

(i) 5 per cent of all premiums on policies of immediate annuity or a deferred annuity of a single premium or of all premiums received on other single premium policies,

[1] *See* S 17C of the Insurance Rules, 1939

(ii) 10 per cent of all first year's premiums and 4 per cent of all renewal premiums on policies of deferred annuity for more than one premium ,

(iii) 1/20 per cent of the total sum assured by policies on which no further premiums are payable ,

(iv) 1 per cent of all annuities paid during the year ,

(v) an amount computed on the basis of the percentages for the time being appropriate to the duration of the insurer's life insurance business specified in the following table, namely

Duration of insurer's life insurance business	Percentage of premiums (less re insurance) received during the year	
	Of first year's premiums	Of renewal premiums
First four years	100	20
Fifth to seventh years	96½	19
Eighth to tenth years	93	18
After the tenth year, if the insurer's business in force—		
(a) is less than 2 crores of rupees	90	18
(b) is less than 5 crores but not less than 2 crores of rupees	90	17
(c) is less than 10 crores but not less than 5 crores of rupees	90	16
(d) is not less than 10 crores of rupees	90	15

[1] Provided that the percentages specified in the above table shall in respect of any first year's premium where the maximum premium paying period under the policy is not throughout life nor more than eleven years, be reduced to a number equal to 7½ times the number of whole years, in that period [1]

Proviso to this sub-section also provides that an insurer spending as expenses of management in any year an amout exceeding the prescribed limits under this sub-section shall not be said to have contravened the provisions of this section if the excess amount so spent is within the limits fixed by the Controller, after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F of the Act [2]

(A) *"Calendar year" or "year", meaning of—Explanation* —The expression "calendar year" or "year" used in this section means the period covered by the Revenue account furnished under clause (6) of sub-section (2) of section 16 of the Act [2]

(B) *"Expenses of management," meaning of—Explanation* —The expression "expenses of management" means all charges wherever incurred either directly or indirectly and includes—

(i) payment of commissions of all kinds,

(ii) capitalised expenses of all kinds,

1 *See* R. 17D Insurance Rules 1939

2. *See* Note 5 under S 11, and Notes 5 and 6 under S 16, *supra*.

(iii) proper share of head office expenses of an insurer having his principal place of business outside India, such expenses shall not be less than the prescribed percentage of the total premiums (less re-insurance) received during the year in respect of life insurance business transacted by him in India, but such expenses would not include any share of head office expenses in respect of life insurance business transacted by him in India when such insurer has his principal place of business in India The prescribed percentage shall not be less than 10 per cent of the first year's premium and 1 per cent of the renewal premium as shown in the revenue account in respect of life insurance business transacted in India during the year [1]

6 Powers of the Controller —The Controller has been given the following powers

(i) he has power to fix the "expenses of management" in consultation with the Executive Committee of the Life Insurance Council constituted under section 64F of the Act, in any year, exceeding the prescribed limit specified in sub-section (2) and if the insurer keeps his expenses of management within such limits so fixed he will not be considered to have contravened the provisions of this section although his expenses exceed the prescribed limits, and

(ii) he has power to require an insurer, in respect of any statement furnished to him in accordance with sub-section (1) to submit the same to another actuary appointed by the insurer and approved by him for certification by such actuary of the said statement whether with or without modifications [2]

7 What the insurer should incorporate in the revenue account sub-section (4) —Sub section (4) of this section enjoins on every insurer doing life insurance business in India to incorporate in the revenue account the following certificates

(i) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and

(ii) an auditor's certificate,

both the certificates must certify that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses, but where the insurer carries on any other class of insurance business in addition to life insurance business an auditor's certificate must certify that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in the respective revenue accounts

8 Revenue account —*See* Note 8 under S 11, *supra*

40C (1) After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission or remuneration for procuring business an amount in excess of the prescribed limits and

Limitation of expenses of management in general insurance business

1 *See* R 17F (1) Insurance Rules 1939

2 *See* also Note under S 22 (1) *supra* and Note 3 under S 64F *post*

in prescribing any such limits regard shall be had to the size and age of the insurer

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section, have been fully debited in the revenue account as expenses

Explanation —In this section,

(*a*) "calendar year" shall have the same meaning assigned to it in section 40B ,

(*b*) "expenses of management" means all charges, wherever incurred, whether directly or indirectly, including commission payments of all kinds and, in the case of an insurer having his principal office of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums on re insurance ceded or accepted) written direct in India during the year ,

(*c*) "insurance business transacted in India" includes insurance business wherever effected, relating to any property situate in India or to any vessel or aircraft registered in India

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Limits of expenses of management in any calendar year sub section (1)*
(*A*) *"Calendar year" meaning of*
(*B*) *'Expenses of management' meaning of*
(*C*) *'Insurance business transacted in India', meaning of*
5 *Power of the Controller*
6 *What the insurer should incorporate in the revenue account ? sub-section (2)*

1 **Legislative changes** —This section has been inserted by Act XLVII of 1950

2 **Object and scope** —The object of the section is to limit the expenses of management of every insurer in respect of any class of general insurance business transacted by him in India after 31st December, 1949 The overall expenses of all insurers are controlled by this section in respect of general insurance business, by section 40B in respect of life insurance business through the medium of a statutory association of insurers and two Councils operating through two Executive Committees with Government representation one being for life and the other for general insurance The General Insurance Council is also to regulate the tariff rates and conditions '[1]

The scope of the section is adequately borne out thus ' The limitations of expenses regarding life insurance business should be brought into force from 1st January, 1951, while the limitation of expenses for general insurance business may be from 1st January, 1950 We think that the basic limitation in either case should be prescribed by rules made under the Act, but rules so made should have due regard to the size and age of the insurers concerned We also feel that all decisions connected with relaxations in the limits of expenses for insurers should be taken by the Controller himself, after consulting the Executive Committee of the relevant Insurance Council "[2]

3 **Applicability** —The provisions of this section apply to insurers transacting general insurance business in India

4 **Limits of expenses of management in any calendar year sub section (1)** —Sub-section (1) of this section prohibits every insurer transacting general insurance business in India after 31st December, 1949, to spend as expenses of management in any calendar year an amount in excess of the prescribed limits which have been prescribed in Rule 17E of the Insurance Rules, 1939 Such expenses of management could include commission or remuneration for procuring general insurance business This sub-section further provides that in prescribing any such limits regard must be given to the size and age of the insurer

The limits of expenses of management as prescribed in Rule 17E of the said Rules are—

(a) in respect of marine insurance business such expenses must not exceed the sum of—

(i) the amount of commission or other remuneration paid to insurance and principal agents in respect of that business but not exceeding in amount 10 per cent of the gross premium income written direct in India, and

(ii) an amount computed on the basis of percentages appropriate to the various parts of his total gross premium income written direct in India during the year as follows

First 5 lakhs of rupees	25 per cent of premiums
Next 5 lakhs of rupees	22 ½ " "
Next 5 lakhs of rupees	20 " "
Next 7½ lakhs of rupees	17 ½ " "
The balance	15 " "

(b) in respect of general insurance business other than marine insurance business such expenses must not exceed the sum of—

1 *See* Notes of the Government of India — 2 *See* the Select Committee Report

(*i*) the amount of commission or other remuneration paid to insurance and principal agents in respect of that business but not exceeding 15 per cent of the gross premium income written direct in India, and

(*ii*) an amount computed on the bases of the percentages appropriate to the various parts of total gross premium income written down in India in the manner as follows

First 10 lakhs of rupees	35 per cent of premiums
Next 5 lakhs of rupees	$32\frac{1}{2}$ „ „
Next 5 lakhs of rupees	30 „ „
Next $7\frac{1}{2}$ lakhs of rupees	$27\frac{1}{2}$ „ „
Next $7\frac{1}{2}$ lakhs of rupees	25 „ „
Next 10 lakhs of rupees	$22\frac{1}{2}$ „ „
The balance	20 „ „

But an insurer has been given the discretion to spend, during the first ten years of his general insurance business, an additional amount in respect of that business, not exceeding

(*i*) the interest earned on the paid-up capital, during the first three years,

(*ii*) an amount equal to 10 per cent of the gross premium income or equal to the interest earned on the paid-up capital, which ever is less, during the second period of three years,

(*iii*) an amount equal to 5 per cent of the gross premium income or equal to 3/4 of the interest earned on the paid up capital whichever is less during the 7th and 8th years, this is not available to an insurer if his gross premium income in that year exceeds 25 lakhs of rupees,

(*iv*) an amount equal to 3 per cent of the gross premium income or equal to half of the interest earned on the paid-up capital, whichever is less during the 9th and 10th years, this is not available also to an insurer if his gross premium income in that year exceeds 25 lakhs of rupees

Where two or more insurers stand in the relation of subsidiary company within the meaning of the Companies Act, the percentages specified above shall be deemed to be the percentages of the aggregate premiums of the two insurers or all the insurers as the case may be and the insurers together shall not spend as expenses of management anything in excess of the limits specified above

(*A*) "*Calendar year*", *meaning of*—The expression 'calendar year" used in this section has been given the same meaning as in section 40B [1]

(*B*) "*Expenses of management*', *meaning of*—The expression "expenses of management" as used in this section means—

(*i*) all charges, wherever incurred, whether directly or indirectly, including commission payments of all kinds and

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1 *See* Note 5 (A) under S 40B, *supra*

(ii) a proper share of head office expenses, in case of an insurer having his principal place of business outside India. Such head office expenses shall not be less than the prescribed percentage of his gross premium income (*i e*, premium income without taking into account premiums on re-insurance ceded or accepted) written direct in India during the year

The prescribed limit of the share of the head office expenses as laid down in Rule 17F (ii) of the Insurance Rules, 1939, shall not exceed more than 5 per cent of the gross premium income written direct in India during the year in respect of general insurance business

(*G*) *"Insurance business transacted in India", meaning of*—The expression "insurance business transacted in India" as used in this section includes insurance business, wherever effected, relating to any property situate in India or to any vessel or aircraft registered in India

5 Power of the Controller proviso to sub-section (1)—The Controller has been given the power to fix the "expenses of management", after consultation with the Executive Committee of the General Insurance Council constituted under section 64F of the Act, in any year, exceeding the limits specified in sub-section (1) of this section, by which the actual expenses incurred may exceed the expenses permissible under the said sub-section If the excess amount so spent by an insurer transacting general insurance business in India is within the limits so fixed by the Controller as aforesaid he shall not be considered to have contravened the provisions of this section and he shall not be liable to penalty as provided in section 102 (1) of the Act [1]

6 What the insurer should incorporate in the revenue account sub-section (2)—Sub-section (2) of this section enjoins in mandatory language on every insurer transacting general insurance business in India to incorporate in his revenue account two certificates as follows

(i) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and

(ii) an auditor's certificate

These certificates must certify that all expenses of management wherever incurred, whether directly or indirectly in respect of the general insurance business transacted by him in India, have been fully debited in the revenue account as expenses

Prohibition of rebates

41 (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take out or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer

Provided that the acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a

1 *See* Note under S 64M *post*

rebate of premium within the meaning of this sub-section if at the time of such acceptance an insurance agent satisfies the prescribed conditions establishing that he is a *bona fide* insurance agent employed by the insurer

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to five hundred rupees

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Prohibition of rebates sub-section (1)*
(A) Rebate, meaning of
(B) Prospectus
5 *Agent's acceptance of commission or policy on his own life*
6 *Penalty for non-compliance*

1 **Legislative changes**—(*a*) The words "take out or renew or continue" occurring in sub section (1) were substituted for the words "effect or renew" by Act XIII of 1941 and the words 'or continuing" occurring in the said sub-section were inserted by the said Act

(*b*) The proviso to sub-section (1) was also added by Act XIII of 1941

(*c*) The words "five hundred rupees" were substituted by Act VI of 1946

2 **Object and scope**—The object of the section is to prohibit giving or receiving any rebate either on commission payable or on premium shown on the policy with a view to induce any person to take out or renew or continue an insurance of any kind in India

Although the section prohibits rebates on commission or on premium, generally it allows rebates on premium if such rebates are in accordance with the published prospectuses or tables of the insurer It also permits normal commission to be paid to and received by *bona fide* insurance agents when they take out policies on their own respective lives on certain conditions

The section is a penal section and non-compliance with its provisions makes the giver and receiver of rebates punishable with fine

3 **Applicability**—The provisions of this section apply to all classes of insurance business, whether life, marine, fire, general or miscellaneous, so long as the lives and properties are in India irrespective of whether the insurance is effected in India or elsewhere The section shall also apply to the Life Insurance Corporation of India

4 **Prohibition of rebates sub-section (1)**—Sub-section (1) of this section enjoins on every person in mandatory language not to allow or offer to allow whether directly or indirectly, (*i*) any rebate of the whole or part of the commission payable, or (*ii*) any rebate of the premium shown on the policy, as an inducement to any person to take out or renew or continue an insurance of any kind of risk relating to lives or property in India

The sub-section also enjoins on any person in the same mandatory language not to accept any rebate with a view to take out or renew or continue a policy except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer

(*A*) *Rebate, meaning of*—The ordinary meaning of the word "rebate" is deduction from the sum to be paid It may also mean discount or a drawback

(*B*) *Prospectus*—The word "prospectus" has been defined in the Companies Act, 1956, to mean any document described or issued as a prospectus and includes any prospectus, notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate [Section 2 (36), Companies Act 1956]

"Those who issue a prospectus, are bound to state everything with strict and scrupulous accuracy, and not only to abstain from stating as facts that which is not so, but to omit no fact within their knowledge, the existence of which might in any degree affect the nature, or extent or quality, of the privileges and advantages which the prospectus holds out as inducements"[1] A statement included in a prospectus is said to be untrue if it is misleading in the form and context in which it is included[2]

5 Agent's acceptance of commission on policy on his own life Proviso to sub-section (1)—Proviso to sub section (1) makes an exception in case of an insurance agent accepting commission in connection with a policy of life insurance taken out by himself on his own life Such acceptance of commission by the insurance agent in effecting policy by himself on his own life must not be regarded as acceptance of a rebate of premium within the meaning of the section But to come within this exception an insurance agent must satisfy the prescribed conditions establishing that he is *a bona fide* insurance agent employed by the insurer

The prescribed conditions as laid down in Rule 16B of the Insurance Rules, 1939, are—

(*a*) he must have secured policies on six different lives excluding his own

(*b*) he must have been an insurance agent continuously from the time of his soliciting or procuring the first policy on each of such six lives or proposing for the policy on his own life, whichever is earlier, till the time when the policies on those six lives and the policy on his own life have all been issued

6 Penalty for non compliance sub-section (2)—Sub-section (2) provides penalty for not complying with the provisions of this section, that is to say, where an insurer or any person whether insurer or not allows or offers to allow any rebate of the commission payable or any rebate of the premium shown on the policy except those provided in sub-section (1) and in proviso thereto he is liable to be punished with a fine which may extend to 500 rupees Likewise, where any agent or any person accepts such rebates otherwise than as provided in this section he also becomes liable to be punished with a fine which may extend to the like amount *i e* Rs 500 Commission contemplated under this section also includes renewal commission and premium should also mean first premium or any renewal premium

Licensing of insurance agents

42 (1) The Controller or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than ten rupees, issue to any person making an application

1 *New Brunswick etc Co* v *Muggeridge*, 2 (1860) 1 D ew and Sm 363 *Henderson* v *Li Lacon* (1867) L R 5 Eq 249 at p 262 *See* Palmer s Company Law p 161 and see *R* v *Kylsant* (1932) 1 K B 442

in the prescribed manner a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business

Provided that—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4), and

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications, and the company or firm was immediately before the 1st day of August, 1957, holding a certificate issued under section 42A entitling it to act as a principal agent for the purpose of procuring insurance business

Provided further that in the case of a company or firm the licence under this sub-section shall be issued only for the purpose of soliciting or procuring general insurance business

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any insurer

(3) A licence issued under this section, after the commencement of the Insurance (Amendment) Act, 1950, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant, being an individual does not, or being a company or firm, any of its directors or partners does not, suffer from any of the disqualifications mentioned in clauses (b), (c) and (d) of sub-section (4) and the application for renewal of the licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the prescribed fee which shall not be more than ten rupees, and an additional fee of a prescribed amount, not exceeding three rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force

(3A) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force

Provided that the Controller may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention of this sub-section on payment by the applicant of a penalty of thirty rupees

(4) The disqualifications above referred to shall be the following

(a) that the person is a minor ,

(*b*) that he is found to be of unsound mind by a court of competent jurisdiction ,

(*c*) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating, or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction

Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Controller shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause ,

(*d*) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of, or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured

(5) If it be found that an insurance agent being an individual is, or being a company or firm contains a director or partner who is, suffering from any of the disqualifications mentioned in sub-section (4), then, without prejudice to any other penalty to which he may be liable, the Controller shall, and if the insurance agent has knowingly contravened any of the provisions of this Act may, cancel the licence issued to the agent under this section

(6) The authority which issued any licence under this section may issue a duplicate licence to replace a licence lost, destroyed or mutilated on payment of the prescribed fee which shall not be more than one rupee

(7) Any person who acts as an insurance agent without holding a licence issued under this section to act as such shall be punishable with fine which may extend to fifty rupees, and any insurer or any person acting on behalf of an insurer, who appoints as an insurance agent any person not licensed to act as such or transacts any insurance business in India through any such person, shall be punishable with fine which may extend to one hundred rupees

(8) Where the person contravening sub-section (7) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every manager, secretary or other officer of the company, or

partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to fifty rupees

SYNOPSIS

1 *Legislative changes*
2 *Scope and object*
3 *Applicability*
4 *Licensing of insurance agents, procedure sub-section* (1)
5 *Licence-holder to act as an insurance agent sub-section* (2)
6 *Period for which licence to remain in force and its renewal, procedure sub-sections* (3) *and* (3A)
7 *Disqualifications disentitling an insurance agent to a licence sub-section* (4)
8 *Controller's power to cancel the licence . sub-section* (5)
9 *Duplicate licence, issuing of sub-section* (6)
10 *Penalty for acting as an insurance agent without a licence sub-sections* (7) *and* (8)

1 Legislative changes —(*a*) Sub-sections (1), (5) and (7) were substituted by Act XXXV of 1957 with effect from 1st September, 1957

(*b*) The word "registered" occurring in sub-section (2) was omitted by Act XLVII of 1950

(*c*) Sub-sections (3) and (3A) were substituted for sub-section (3) by Act XLVII of 1950

(*d*) The words "or forgery or an abetment of or attempt to commit any such offence" were inserted by Act XIII of 1941

(*e*) Proviso to sub-section 4 (*c*) was added by Act XIII of 1941.

(*f*) The word 'Controller" was substituted by Act XLVII of 1950

(*g*) The words "against an insurer or an insured" were substituted for the words "against an insurer or an assured" by Act XIII of 1941

2 Scope and object —The object of the section is to restrict any and every person to act as an agent of an insurer It provides a machinery by which a person desirous of acting as an agent of an insurer to obtain a licence in his favour to enable him to act on behalf of an insurer for the purpose of soliciting and procuring business for the latter and thereby to become entitled to receive commission or remuneration for his services as such agent. To obtain a licence an agent must not suffer from any disqualifications mentioned in the section and he must apply to the Controller in the prescribed manner with the prescribed fee Provisions have also been made for renewal of licence and for duplicate licence when the original is lost, destroyed or mutilated on payment of prescribed fees Any individual, company or firm may, on satisfying the conditions laid down in the section and on proper applications being made in this behalf and prescribed fees being paid may obtain a licence under this section A person obtaining a licence under this section is only entitled to act as an insurance agent for any insurer As the Controller has been given the power to issue a licence he has also the power to cancel it on grounds mentioned in this section The section has been made penal as both the insurer and the agent have been made punishable with fine for contravention of the provisions of this section

3 Applicability —The provisions of this section apply to insurance agents and insurers of all classes of insurance business when the agents are individuals, but when such agents are companies or firms the provisions apply to

general insurance business only The section has also been applied to the Life Insurance Corporation of India [1]

4 **Licensing of insurance agents, procedure, sub-section (1)**—Sub-section (1) of this section lays down the procedure by which a person whether an individual, company or firm, may obtain a licence to act as an insurance agent for the purpose of soliciting or procuring insurance business Normally, the Controller has been made the licensing authority and he is to issue the licence under this section but he has also been given the power to delegate such authority to any officer when the latter by virtue of such authority can issue the licence The issuing of the licence under this section seems to be automatic as when all the conditions envisaged under this section are satisfied by the person applying for a licence, the Controller or an officer authorised by him has no option but to issue such licence Moreover, the word "shall" used in this section indicates that the licensing authority "must" issue the licence applied for

For a licence the person must apply in the prescribed manner and must pay the prescribed fee which must not be more than Rs 10 The application for a licence for the first time or for a fresh licence must be made in Form V as prescribed under Rule 16A (*a*) of the Insurance Rules, 1939 The prescribed fee for such licence shall be paid in the form of stamps to the value of Rs 5 or Rs 7 as the case may be and the stamp shall be affixed to the application in the proper place

The licence shall be issued in Form V-B

But before a licence is issued to a person under this section he must satisfy the following

"(i) in the case of an individual, that he does not suffer from any of the disqualifications mentioned in sub-section (4) hereinafter stated, and

(ii) in the case of a company or firm, that any of its directors or partners (*a*) does not suffer from any of the said disqualifications, and (*b*) the company or firm was, immediately before the 1st August, 1957, holding a certificate issued under section 42A entitling it to act as a principal agent for the purpose of procuring insurance business

It has also been provided that a licence under this sub-section to a company or firm should be issued only for the purpose of soliciting or procuring general insurance business, and for no other insurance business

5 **Licence-holder to act as an insurance agent sub-section (2)** — Sub-section (2) of this section provides that a person holding a licence under this section shall be entitled to act as an insurance agent for any insurer, that is to say, he can act as an insurance agent only and not as any other kind of agent, such as, principal, chief or special agent But as an insurance agent he can act for any insurer whether it transacts life, general or miscellaneous insurance business or any combined business thereof But in the case of a company or firm its licence will permit it to solicit or procure general insurance business only

6 **Period for which licence to remain in force, and its renewal procedure sub-sections (3) and (3-A)** —Normally a licence issued under this section will remain in force for a period of three years from the date of its

[1] *See* S 43 (2A) L I C Act, *post*

issue after the commencement of the Insurance (Amendment) Act, 1950 But such a licence can be renewed for a further period of three years at any time on payment of the prescribed fee which shall not be more than ten rupees

For the renewal of a licence already held by an insurance agent he shall have to apply to the Controller in Form VA prescribed under R 16A of the said rules and must pay a fee of Rs 5 prescribed under the same rule The fee should be paid in the form of stamps to the value of Rs 5 which must be affixed to the application in the proper place Such application must reach the issuing authority at least 30 days before the date on which the licence ceases to remain in force But if such application does not reach the said authority at least 30 days before the date on which the licence ceases to remain in force, an additional fee of Rs 2 as prescribed under the said rule (which fee must in no case exceed Rs 3) by way of penalty has to be paid i e when the application reaches the issuing authority after 30 days before the date the licence expires he shall have to pay a fee of Rs 7 and not Rs 5 Moreover, the applicant for renewal of licence must not also, when an individual and any of its directors or partners when a company or firm suffer from any of the disqualifications mentioned in clauses (*b*), (*c*) and (*d*) of sub-section (4) [1]

Sub section (3-A) of this section provides that when an application for renewal of licence does not reach the issuing authority before the date on which the licence ceases to remain in force, such application should not ordinarily be entertained by him But proviso to the said sub section confers discretion on the Controller to accept any such application reaching him beyond the date of the expiry of the licence only when he will be satisfied that undue hardship would be caused to the applicant if his licence be not renewed and on his thus being satisfied he may renew the licence when the applicant pays Rs 30 by way of penalty

7 Disqualifications disentitling an insurance agent to a licence sub section (4) —Sub-section (4) of this section enumerates the disqualifications which disentitle a person to a licence under this section to act as an insurance agent for the purpose of soliciting or procuring insurance business for any insurer The applicant for a licence under this section must not suffer from any of the disqualifications mentioned below

(*a*) that he must not be a minor ,

(*b*) that he must not be found to be of unsound mind by a Court of competent jurisdiction, i e , he must not be a lunatic adjudged by a competent Court ,

(*c*) that he must not be found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction i e he must not be convicted of offences under sections 403, 404 406, 417 418 419 420 465, 467, 468, 469, 471, 109 and 511, I P C , by a competent Court

But proviso to clause (*c*) of this sub-section removes the disqualifications above referred to where at least five years have elapsed since the completion of sentence for offences aforesaid The proviso confers power on the Controller to declare the disqualifications as not becoming operative for the purposes of issuing a licence under this section after the expiry of five years from the date of his release from conviction of the said offences

1 For such disqualifications *see* Note 7 *post*

(*d*) that he must not be found guilty of or has knowingly participated in or convicted at any fraud, dishonesty or misrepresentation against an insurer or an insured, in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer [1]

8 **Controller's powers to cancel the licence sub-section** (5) —Sub-section (5) of this section confers power on the Controller to cancel the licence issued to an insurance agent under this section when he is found to have knowingly contravened any of the provisions of this Act This power of cancellation of the licence has been conferred on the Controller without prejudice to any other penalty to which the said agent may be liable, specially when he is found in case of an individual or any director or partner is found in case of a company or firm, suffering from any of the disqualifications mentioned in sub-section (4) An appeal lies against an order cancelling a licence under section 110 (C) of the Act [2]

9 **Duplicate licence, issuing of sub section** (6) —Sub-section (6) confers power on the issuing authority of a licence to issue a duplicate licence to replace one lost, destroyed or mutilated on payment of a prescribed fee not exceeding Re 1

10 **Penalty for acting as an insurance agent without a licence sub-sections** (7) **and** (8) —Sub-section (7) of this section imposes penalty on the insurance agent, insurer or any person acting on behalf of the insurer, in case of the agent for his acting as an insurance agent without holding a licence under this section, he is punishable with fine which may extend to Rs 50, and in case of insurer or any person acting on his behalf for appointing such agent not licensed to act or transacting any insurance business in India through him, such insurer or person is punishable with fine which may extend to Rs 100 When the provisions of this sub-section are contravened by a company or firm, every director, manager, secretary or other officer of the company and every partner of the firm shall be punishable with fine which may extend to Rs 50 This penalty can be imposed without prejudice to any other proceedings which may be taken against such company or firm

Registration of principal agents chief agents and special agents

42A (1) The Controller or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee, which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to him in the prescribed manner if,—

(*a*) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(*b*) in the case of a company or firm, any of its directors or partners does not suffer from any of the said

1 *See* Note under S 64 I *post*
2 *See* also Note 8 under S 40A and Note 6 under S 41 *supra*, and Note *post*

disqualifications, and a certificate to act as a principal agent, chief agent or special agent, as the case may be, for the purpose of procuring insurance business shall be issued to him

(2) A certificate issued under this section shall entitle the holder thereof to act as a principal agent, chief agent or special agent, as the case may be, for any insurer.

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made in this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of a chief agent and the provisions of clauses 2 and 3 of Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee, which shall not be more than twenty-five rupees, in the case of a principal or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses (*b*) to (*d*) of sub-section (4) of section 42, and where the applicant is a company or a firm, any of its directors or partners do not suffer from any of the said disqualifications

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is, suffering from any of the disqualifications mentioned in sub-section (4) of section 42, without prejudice to any other penalty to which he may be liable, the Controller shall, and where a principal agent, chief agent or special agent has contravened any of the provisions of this Act, may cancel the certificate issued under this section to such principal agent, chief agent or special agent

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees

(6) Any person who acts as a principal agent, chief agent or special agent without holding a certificate issued under this section

to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints such a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through any such person, shall be punishable with fine which may extend to one thousand rupees

(7) Where the person contravening sub-section (6) is a company or firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or any other officer of the company, and every partner of the firm who is knowingly a party to such contravention, shall be punishable with fine which may extend to five hundred rupees

(8) The provisions of sub-sections (6) and (7) shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950

SYNOPSIS

1. *Legislative changes.*
2. *Object and scope*
3. *Applicability*
4. *Registration and certificate of principal agent chief agent and special agent - sub-section (1)*
5. *Period for which certificate to remain in force sub-section (3)*
6. *Renewal of certificate, procedure sub-section (3).*
7. *Disqualifications disentitling a certificate under this section*
8. *Power of the Controller to cancel certificate - sub-section (4)*
9. *Duplicate certificate - sub-section (5)*
10. *Penalty for acting as principal agent, chief agent and special agent without the certificate - sub-sections (6) and (7)*

1. Legislative changes—Section 42A was inserted by Act XLVII of 1950

2. Object and scope—The object of this section is to prescribe the procedure for registration of principal agent, chief agent and special agent and to obtain a certificate therefor to enable them to act as such agents for the purpose of procuring insurance business

This section and the succeeding sections 42B and 42C "provide for the licensing of principal, chief and special agents and the cancellation of such licences and also regulate the terms of employment, activities and contracts of principal, chief and special agents"[1]

There is no substantial difference between licensing of insurance agent under the preceding section 42 and the registration of principal agent, chief agent and special agent as provided in this section except the difference in form In the former section the authority to an insurance agent is called a licence, while in this section the authority to a principal, chief or special agent to act as such is called a certificate The disqualifications which disentitle

1. *See* Notes of the Government of India.

an insurance agent to obtain the licence under section 42 are the same which also disentitle a principal, chief or special agent to obtain a certificate under this section Licensing authority in both the cases is the same, *viz*, the Controller, or an officer authorised by the Controller in this behalf The Controller has been given the same powers with regard to a certificate as in the case of a licence to renew, cancel and to issue a duplicate certificate Penalties have also been provided for contravention of the provisions of this section and also for acting as a principal agent, chief agent or special agent without holding a certificate under this section The principal agent, chief agent or special agent and the insurer or any person acting on his behalf have been made amenable to the penalties provided in this section The only difference between the licensing of an insurance agent and the certificate of a principal agent, chief agent or special agent lies in this that the licence remains in force for a period of three years while a certificate remains in force for a period of twelve months only and there is also difference in the rates of fees payable in respect of such certificates Moreover certain differences may also be found in the matter of renewal of certificates of the principal and chief agents and the special agents as they are to produce a certificate from the insurer concerned, when applying for renewal of their certificates, that they have complied with certain provisions of Part A and Part B respectively of the Sixth Schedule of the Act, while in the case of a renewal of licence under section 42 no such certificate from any insurer is necessary

3 **Applicability sub-sections (2) and (8)** —The provisions of this section apply to principal agents, chief agents or special agents, as the case may be, and to all insurers, irrespective of transacting any class of insurance business Sub-section (2) of this section entitles the holder of a certificate under this section to act as such agent for any insurer But sub-sections (6) and (7) of this section providing penalties for acting without a certificate and for contravening the provisions of sub-section (6), *viz*, acting without a certificate, have not been made applicable until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950, *i e* 1st September, 1950

4 **Registration and certificate of principal agent, chief agent and special agent sub-section (1)** —Sub-section (1) of this section enjoins in mandatory language on the Controller or an officer authorised by him in this regard to register any person who makes an application to him in the prescribed manner and on payment of the prescribed fee and to issue a certificate to act as a principal agent chief agent or special agent, as the case may be, for the purpose of procuring insurance business The prescribed fee, as provided in this sub-section must not be more than Rs 25 for a principal agent or a chief agent and Rs 10 for a special agent The fee as prescribed under Rule 16C of the Insurance Rules 1939, is Rs 25 for obtaining a certificate to act as a principal agent or chief agent and Rs 10 for a certificate to act as a special agent

The application for a certificate under this section must be made in Form V C as prescribed under R 16D (a) of the said Rules Such form should be used when the applicant applies for a certificate for the first time or for a fresh certificate Stamps to the value of Rs 25 in case of a certificate for a principal or chief agent and Rs 10, in case of a certificate for a special agent must be affixed on the application in the proper place Where an application for a certificate is made by an individual he must not suffer from any disqualifications mentioned in sub-section (4) of section 42 or when applicant is a company or a firm, any of its directors or partners must not also suffer from any of the said disqualifications.

Before issuing a certificate under this section the Controller or the officer authorised by him in this behalf shall, after taking all reasonable steps, have to satisfy himself that the application is in order and the applicant is not disqualified from holding a certificate When he will be so satisfied he shall issue a certificate in Form V E[1]

5 **Period for which certificate to remain in force Sub-section (3) —** A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, i e , the certificate is renewable from year to year Such year is to be computed from the date of issue of the certificate and need not be a calendar year or a financial year

6 **Renewal of certificate, procedure sub section (3) —**A certificate issued under this section can be renewed from year to year if an application for such renewal in Form V-D is made by the holder of such certificate to the Controller, (*a*) on payment of the prescribed fee which is Rs 25 in the case of a principal agent or a chief agent and Rs 10 in the case of a special agent, and (*b*) on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of Part A of the Sixth Schedule in case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of chief agent and the provisions of clauses 2 and 3 of Part C of the said Schedule in the case of a special agent, have been complied with

The certificate of the insurer in respect of the principal agent must contain that the principal agent has procured or caused to be procured through insurance agents such an amount of general insurance business of any class as has yielded a gross premium income of not less than Rs. 22,000 in the previous calendar year and/or on his failure to procure the said amount of business in that year he has forfeited to the insurer (*i*) one-fourth of his total remuneration payable to him for that year in case of fire or miscellaneous insurance business or (*ii*) one-third of his total remuneration in case of marine insurance business

Such certificate in case of the chief agent must contain that he has employed or caused to be employed for and on behalf of the insurer either directly or through special agent at least 6 insurance agents where such agents in force of the insurer is less than one crore of rupees and at least 4 agents in any other case and each of such agents had procured new business amounting to not less than Rs 10,000 in the previous calendar year and or on failure of such chief agent to appoint the said agents and on failure of any of such agent from procuring the said amount of business for the said agents in two years the chief agent has forfeited to the insurer half of his total remuneration payable to him by the insurer for those years

Such certificate in case of the special agent must contain that the special agent has employed at least two insurance agents and has procured or caused to be procured through such agent in the previous calendar year new business amounting to not less than Rs 5,000 on which premiums have been paid in full and or on failure to procure the first year premiums in full at least in the first year of appointment of such agents and on the latter's failure to procure the said amount of business in two years where first year's premiums have not been paid in full in the second year the special agent has forfeited to the insurer 50 per cent of the remuneration payable to him in the first year or any one class of insurance business as the case may be, for that year

[1] See Schedule V E

Moreover, to entitle the applicant to a renewal of his certificate under this section he must not, if he be an individual, suffer from any of the disqualifications mentioned in clauses (*b*) to (*d*) of sub section (4) of section 42 and if the applicant be a company or a firm, any of its directors or partners must not also suffer from any of the said disqualifications

Normally, an application for renewal of a certificate must reach the issuing authority *i e* the Controller or his authorised officer, before the date on which the certificate already issued ceases to remain in force, *i e*, such renewal application should be made within the year of its issue But where there is delay in making such application, *i e* where it reaches the issuing authority on a date on which the certificate ceases to remain in force the applicant shall have to pay an additional fee prescribed therefor not exceeding Rs 5 by way of penalty The prescribed additional fee is Rs 5 in case of an application by a principal or chief agent and Rs 3 in case of an application by a special agent Rule 16D (*a*) of the Insurance Rules, 1939, *inter alia* provides that no application for the renewal of a certificate will be accepted if it reaches the Controller after a period of 12 months from the date on which the certificate ceases to be in force Hence an application for renewal of a certificate with the prescribed additional fees must be made within 12 months of the date on which the certificate ceases to be in force [1]

7 Disqualifications disentitling the agents to a certificate under this section —*See* Note 7 under section 42 The disqualifications mentioned therein are the same and identical

8 Power of the Controller to cancel certificate Sub-section (4) — Sub-section (4) of this section confers power on the Controller to cancel the certificate issued under this section to a principal agent chief agent or special agent This power has to be exercised by the Controller under two circumstances *viz* (i) where the principal agent, chief agent or special agent being an individual is found to be or being a company or firm contains a director or partner who is found to be, suffering from any of the disqualifications mentioned in sub section (4) of section 42, and (ii) where a principal agent, chief agent or special agent has contravened any of the provisions of this Act In the case of the former *i e*, where he suffers from any of the said disqualifications, the Controller must cancel the certificate but in the case of the latter, *i e* where he contravenes any of the provisions of the Act, the Controller has the discretion to cancel or not to cancel the certificate

Where a licence of an insurance agent or a certificate of a principal or chief or special agent is cancelled, the Controller shall (*a*) inform all the officers authorised by him to issue a licence or certificate that the licence or the certificate, as the case may be has been cancelled, (*b*) require the person concerned to return the licence or certificate issued to him, and (*c*) cause the fact of cancellation to be published in the *Gazette of India* and in such State Gazette or Gazettes as he deems fit [2]

9 Duplicate certificate Sub section (5) —Sub-section (5) of this section confers discretionary power on the authority which issued any certificate under this section *i e* the Controller or any officer authorised by him in this behalf to issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee not exceeding Rs 2

1 *See* R 16-G proviso of the said Rules 2 *See* Rule 16 H of the Insurance Rules 1939.

To obtain the issue of a duplicate licence and certificate, the person to to whom a licence or certificate has been issued, must submit to the Controller an application requesting the issue of a duplicate licence or certificate with a fee of Re 1, in the case of a licence, and Rs 2 in the case of a certificate, paid in the form of stamp duty affixed thereon and with a declaration giving full details regarding the issue and loss, destruction or mutilation of the licence or certificate, and mutilated pieces, if any, shall be returned to the Controller with the said application On being thus satisfied the Controller will issue a duplicate licence in Form V-B or a certificate in Form V-E as the case may be, with an endorsement thereon that it is a duplicate [1]

10 Penalty for acting as principal, chief or special agent without a certificate Sub sections (6) and (7) —Sub-section (6) of this section imposes penalty on (i) any person who acts as a principal agent, chief agent or special agent without holding a certificate under this section, and (ii) any insurer or any person acting on behalf of any insurer who (*a*) appoints as principal agent, chief agent or special agent any person not entitled to act as such, or (*b*) transacts any insurance business in India through any such person The principal agent chief or special agent shall be punishable under this sub-section with fine which may extend to Rs 500 while the insurer or any person acting on his behalf appointing such a person as principal, chief agent or special agent or transacting any insurance business in India through him shall be punishable with fine which may extend to Rs 1,000

Sub-section (7) of this section, on the other hand, imposes penalty on the person contravening the provisions of sub-section (6) when such person is a company or a firm In such a case, every director, manager, secretary or any other officer of the company and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to Rs 500 This penalty of Rs 500 can be imposed in addition to any other proceedings which may be taken against the company or firm and without prejudice to the right of taking such proceedings

Regulation of employment of principal agents

42B (1) No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint or transact any insurance business in India, through a principal agent

(2) Every contract between an insurer and a principal agent shall be in writing and the terms contained in Part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract

(3) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1950, appoint any person as a principal agent except in a presidency town unless the appointment is by way of renewal of any contract subsisting at such commencement

(4) Within sixty days of the commencement of the Insurance Amendment) Act, 1950, every principal agent shall file with the insurer concerned a full list of insurance agents employed by him

1 *See* 16 E of the said Rules

indicating the terms of the contract between the principal agent and each of such insurance agents, and, if any principal agent fails to file such a list within the period specified any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list, shall, notwithstanding anything in any contract to the contrary, cease to be so payable

(5) A certified copy of every contract as is referred to in sub-section (2) shall be furnished by the insurer to the Controller within thirty days of his entering into such contrac and intimation of any change in any such contract shall be furnished by the insurer with full particulars thereof to the Controller within thirty days of the making of any such change

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned

(7) Every contract as is referred to in sub-section (2) subsist ing at the commencement of the Insurance (Amendment) Act, 1950, shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section (4) of section 40A

(8) If any dispute arises as to whether a person is or was a principal agent, the matter shall be referred to the Controller, whose decision shall be final

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased, shall be entered

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Appointment of principal agent prohibited, Sub-section (1)*
4 *Restriction on appointment of principal agent during the interim period Sub-section (3)*
5 *Contract between an insurer and a principal agent Sub-section (2)*
6 *Principal agent's duty Sub-section (4)*
7 *Insurer's duty Sub-section (5)*
8 *Commission of insurance agent payable by whom Sub section (6)*
9 *Contract regarding terms of remuneration Sub-section (7)*
10 *Dispute regarding principal agency of any person Sub-section (8)*
11 *Register of principal agent, maintenance of Sub section (9)*

1 Legislative changes—Section 42B was also inserted by Act XLVII of 1950

2 Object and scope—The object of the section is to put an end to within a period of seven years from the commencement of the Insurance (Amendment) Act, 1950 *i e* 1st September, 1950 the system of employing

principal agents in general insurance business and during the interim period to confine their appointment to Presidency towns and also to regulate their employment [1]

The section after providing for abolition of the system of employing principal agents in general insurance business after 31st August, 1957, and for their restricted appointment in Presidency towns *viz*, of Calcutta, Madras and Bombay during the interim period of seven years, regulated their employment during the said period with regard to the terms of contract between such principal agents and their insurers on the one hand and between the principal agents and insurance agents employed by them on the other It also imposes certain duties upon the principal agents in the matter of filing a full list of insurance agents employed by them with their respective employer-insurer and in bringing their contracts with the insurance agents so employed in conformity with the provisions of section 40A in respect of commission or remuneration payable to the latter, and in the matter of payment of such commission or remuneration to them

The section also imposes certain duties on the insurer in the matter of furnishing to the Controller a certified copy of the contract between him and the principal agent and any changes made therein within a specified date and also in the matter of maintaining a register of all principal agents employed by him

3 Appointment of principal agent prohibited Sub-section (1) — Sub section (1) prohibits an insurer from employing a principal agent or transacting any insurance business in India through him after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950 Hence this section has no importance at this date and should be deemed to have been repealed by now

4 Restriction on appointment of principal agent during the interim period Sub section (3) —Sub-section (2) permits employment of a principal agent after the commencement of the said Amendment Act, 1950, as an *interim* measure during the period of seven years, any person as such agent only in the Presidency towns of Calcutta, Madras and Bombay Such appointment relates to new one but does not affect any appointment which is made by way of renewal of any contract subsisting at the commencement of the said Amendment Act i *e*, 1st September, 1950

5 Contract between an insurer and a principal agent Sub-section (2) —Sub-section (2) enjoins that every contract between an insurer and a principal agent (i) must be in writing, and (ii) must incorporate therein the terms contained in Part A of the Sixth Schedule and such terms must form part of every such contract

The terms of such contract must *inter alia* include—

(i) that all payments of commission to insurance agents shall be made by the principal agent,

(ii) that the principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class as will yield a gross premium income of not less than Rs 20,000 in each calendar year,

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1 *See* Select Committee Report

(iii) that on his failure to procure the said amount of business, the principal agent shall forfeit to the insurer—

(a) one-fourth of his total remuneration in respect of fire or miscellaneous insurance business, or

(b) one-third of such remuneration in respect of marine insurance business,

(iv) that his contract shall terminate on 31st March immediately following the second calendar year on his failure to procure the said business in any two successive calendar years,

(v) that the principal agent shall not generally by himself procure any class of insurance business unless the business relates to any property under his immediate control

6 **Principal agent's duty Sub-section** (4) —Sub section (4) imposes a duty on the principal agent to file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of the insurance agents employed by him Such list has to be filed within 60 days of the commencement of the Insurance (Amendment) Act, 1950, *i e*, 1st September, 1950 On his failure to file the said list within the said period, any commission payable to him on premiums from the date of expiry of the said period of sixty days until the date of the filing of the said list shall cease to be so payable even if there be anything in any contract to the contrary

7 **Insurer's duty Sub-section** (5) —Sub-section (5) imposes a duty on the insurer to furnish to the Controller a certified copy of every contract made between him and the principal agent Such copy has to be furnished to the Controller within 30 days of his entering into such contract He should also furnish to the Controller any change in any such contract with full particulars of the change or changes made therein also within 30 days of the making of any such change, or changes

8 **Commission of insurance agent payable by whom Sub-section** (6) —Ordinarily, commission due to any insurance agent in respect of any general insurance business procured by such agent is paid by the principal agent who employs him for and on behalf of his insurer But if for any reason the commission due to such insurance agent is not paid by the principal agent the insurer has been given the discretion under this sub-section to pay the insurance agent his commission so due and in that case the insurer can recover the amount so paid from the principal agent concerned

9 **Contract regarding terms of remuneration Sub-section** (7) — Sub-section (7) of this section provides that every contract between an insurer and a principal agent which subsists at the commencement of the Insurance (Amendment) Act 1950, *i e* 1st September, 1950 shall with regard to the terms of remuneration or commission, conform to the provisions of sub-section (4) of section 40A, that is to say, if the contract so subsisting at the commencement of the said Amendment Act provided a higher rate of remuneration or commission, such remuneration or commission must be deemed to have been so altered as to be read therein the statutory commission to be paid to him as provided in the said sub-section of section 40A Thus, where in a contract between an insurer and the principal agent the terms of contract for payment of commission to such agent were 30 per cent of the premium payable on the policy of fire or miscellaneous insurance business and 25 per cent of the policy

of marine insurance business, the same should be altered to read automatically as 20 per cent and 15 per cent respectively as conforming to the provisions of sub-section (4) of section 40A

10 Dispute regarding principal agency of any person Sub-section (8) —Sub-section (8) of this section confers on the Controller the power of an arbitrator This sub-section provides that if any dispute arises as to whether a person is or was a principal agent, such dispute should be referred to the Controller and the Controller's decision in the matter shall be final

11 Register of principal agent, maintenance of Sub-section (9) — Sub-section (9) of this section enjoins on every insurer a duty to maintain a register of principal agents appointed by him The following entries must be entered in the said register—

(i) the name and address of every principal agent appointed by him ,

(ii) the date of the appointment of each principal agent , and

(iii) the date on which his appointment as principal agent ceases [1]

Regulation of employment of chief agents and special agents

42C (1) Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him, procure life insurance business for the insurer in any area outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating, and neither the head office nor any branch office of the insurer shall operate in any area for which a chief agent has been appointed

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950, for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situate, and a chief agent who, in pursuance of an agreement in writing, had been operating for a similar period within such limits from continuing to operate within the said limits

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in India,

1 *See* S 43 *post* regarding register of insurance agent

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if any chief agent fails to file such a list within the period specified, any commission payable to such chief agent on premium received from the date of the expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable

(4) Every contract between an insurer carrying on life insurance business and a special agent, or between a chief agent of such insurer and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part, of every such contract

Provided that the Controller may, in the case of a contract between a co-operative insurance society as defined in clause (b) of sub-section (1) of section 95 and a co-operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force and acting as a special agent, alter, to such extent as he thinks fit, all or any of the said terms

(5) A certified copy of every contract as is referred to in sub-section (1) or sub-section (4) shall be furnished by the insurer or the chief agent to the Controller within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Controller within thirty days of the making of any such change

(6) No such contract as is referred to in sub-section (1) or sub-section (4) shall be entered into or renewed for a period exceeding ten years at any one time, and, notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable without the consent of the other

(7) Every contract between an insurer and a person acting on behalf of such insurer who, before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this Act, and any such modification shall—

(i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject, in the case of remuneration payable on business procured before such commencement, to a maximum of an overriding commission of two and-a-half per cent, *plus* a further commission not exceeding three and-three-quarters per cent on premiums in respect of which no commission is payable to any insurance agent,

(ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration

(8) Any such contract as is referred to in sub-section (7) which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause (i) of the proviso to sub-section (7) as respects remuneration, if any, payable on business procured before the termination of the contract

(9) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent

(10) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Controller whose decision shall be final

(11) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which similar particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Contract between an insurer and chief agent* Sub-section (1)
4 *Business operation outside area prohibited* Sub section (2)
(A) *Exception to sub section (2) proviso 1 to sub-section (2)*
(B) *Further exception to sub-section (2), proviso 2 to sub-section (2)*
5 *Chief agent's duty to file full list of insurance agents* Sub-section (3)
6 *Contract between an insurer and a special agent* Sub-section (4)
7 *Contract between a chief agent and a special agent*
8 *Certified copy of every contract to be filed with the Controller* Sub-section (5)
9 *Period of contract and its renewal* Sub-section (6)
10 *Termination of contract subsisting at the commencement of the Insurance (Amendment) Act, 1950* Sub-section (7)
(A) *Modification of contract subsisting* Proviso 1 to sub-section (7)
(B) *Dispute to be referred to arbitration* Proviso 2 to sub-section (7)
11 *Commission in respect of contract subsisting on 1st January, 1949 but terminated before the commencement of the Insurance (Amendment) Act 1950* Sub section (8)
12 *Renewal commission payable to special agent* Sub-section (9)
13 *Dispute regarding status of a person employing insurance agents* Sub-section (10)
14 *Maintenance of registers* Sub-section (11)

1 Legislative changes —Section 42C was also inserted by Act XLVII of 1950 and the word 'India' occurring in the second proviso to sub-section (2) was substituted by Act LXII of 1956 for the words "the States"

2 Object and scope —The object of this section is to regulate the employment of chief and special agents who are appointed by insurers doing life insurance business Such regulations lie in their respective duties obligations and responsibilities towards insurers and as betwe n chief agents and special agents

The section provides what the contract between an insurer and a chief agent should contain and also the contract between an insurer and a special agent and between a chief agent and a special agent should be It restricts the field of operation for procuring life insurance business of the chief agent It also says that all contracts between the insurer and his chief agents subsisting at the date of the commencement of the Insurance (Amendment) Act 1950, will automatically come to an end after ten years from the said d te i e, 1st September 1950 if they do not terminate before that date according to the forms of the contract itself

As in the case of a contract with the principal agent, a certified copy of the contract with the insurer and the chief agent or the special agent as the case may be has to be furnished to the Controller within certain specified days either by the insurer or the chief agent and any change in the said contract has to be furnished to the Controller with particulars thereof within certain specified days of such change having occurred th.rein Like the principal agent the chief agent is also required to file with his insurer a full list of insurance agents employed by him stating the t.rms of employment and the business procured by each such agent within a period specified His failure in this regard debars him from receiving and accepting any commission on premiums received from the said specifi d date until the filing of the said list Certain modifications have been made with

regard to commission payable by an insurer to a person acting on his behalf Such commission is restricted to 2½ per cent as overriding commission on the outturn of the business and 3¾ per cent on premiums in respect of which no commission is payable to an insurance agent

This section also permits a special agent to receive renewal commission on policies effected through him as an insurance agent at any time before he was appointed a special agent to act as such As in the case of a principal agent, the Controller has been given the power to decide any dispute regarding whether any person is or was a chief agent or special agent and his decision thereto has been made final Duties to maintain separate registers for chief and special agents have also been imposed on the insurers concerned Similar duties to maintain a register of special agents employed by the chief agent have also been imposed on the latter

3 **Contract between an insurer and chief agent Sub-section (1)** — Every contract between an insurer carrying on life insurance business and his chief agent must be as follows

(*a*) that it must be in writing,

(*b*) it must specify the area for which the chief agent is appointed such area must not be less in extent than a district or the equivalent thereof, and

(*c*) its terms must be the terms contained in Part B of the Sixth Schedule and must form part of the said contract

Terms deemed to be included in every such contract *inter alia* are—

(*i*) at least six insurance agents are to be employed where the insurer's business in force is less than one crore of rupees and 12 such agents in any other case, and each of such agents would procure in each calendar year new business amounting to not less than Rs 10,000,

(*ii*) commission to insurance agents may be payable by the chief agent direct or through a special agent,

(*iii*) renumeration to chief agent shall be the overriding commission but where his commission is stopped on or after 1st January, 1949, and not paid to insurance agent one-fourth of commission payable to insurance agent may become payable to the chief agent,

(*iv*) half of his total remuneration shall be forfeited to the insurer on his failing to comply with the requirements of (*i*) in two successive calendar years for those years,

(*v*) there will be an automatic termination of his contract on 31st March immediately following last of the calendar year where he fails to comply with the requirements of (*i*) in four successive calendar years,

(*vi*) between the chief agent and the insurance agent one intermediary may be appointed either on a salary basis or by way of commission but the chief agent may employ as many persons as he thinks fit on a salary basis provided their salaries are paid out of his overriding commission

4 **Business operation outside area prohibited** Sub-section (2) of this section prohibits a chief agent, either directly insurance agents or special agents employed by or through him

in the following areas for the purpose of procuring life insurance business for the insurer—

(a) in any area outside the area for which he has been appointed, or

(b) in any area for which another chief agent has been appointed, or

(c) in any area in which the head office or any branch office of the insurer is operating.

Similar provisions have been made prohibiting the head office or any branch office of the insurer from operating in any area for which a chief agent has been appointed and such officers are debarred from procuring any life insurance business direct from an area over which a chief agent has been appointed.

(A) Exception to sub-section (2) : *Proviso 1 to sub-section (2)* —The first proviso to sub-section (2) makes an exception in that it does not prohibit the operation of the head office and the chief agent from procuring life insurance business outside their respective areas under the following circumstances, that is to say—

(a) where, at the commencement of the Insurance (Amendment) Act, 1950, (1st September, 1950) the head office of the insurer had been operating for a period of not less than ten years before the said date within the municipal limits of any town where the head office is situate; and

(b) where a chief agent had been operating for a similar period of not less than ten years within the said limits of the said municipal town in pursuance of an agreement in writing.

(B) Further exception to sub-section (2) : *Proviso 2 to sub section (2)* —The second proviso to sub-section (2) makes further exception in case of an insurance agent in that it does not prohibit any insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in India. Hence, restriction with regard to the area of operation from procuring life insurance business does not apply to insurance agents. They are permitted to procure life insurance business from any area whether assigned to a chief agent or not and submit the proposals direct to the principal office of the insurer in India.

5 Chief agent's duty to file full list of insurance agents Sub-section (3)—Sub-section (3) of this section imposes a duty on every chief agent to file with his insurer a full list of the insurance agents employed by him, within sixty days of the commencement of the Insurance (Amendment) Act 1950 (1st September, 1950). Such list must indicate (i) the terms of the contract between the chief agent and each of such insurance agents employed by him and (ii) the business secured by each of the said agents.

On the chief agent's failure to file the said full list within the said period of 60 days he will suffer from disability of receiving any commission due to him on premiums received from the date of the expiry of the said period as in spite of a contract existing to the contrary. But such disability will cease and he will be entitled to his commission withheld for the said period as soon as he files the said list. This provision has been made so as to put pressure upon the chief agent to file the said list within the said period or shortly thereafter.

6 Contract between an insurer and a special agent Sub-section (4) — Every contract between an insurer carrying on life insurance business and a special agent, or between a chief agent of such insurer and a special agent must be in accordance with the following

(*a*) that the contract must be in writing, and

(*b*) its terms must incorporate the terms contained in Part C of the Sixth Schedule and must form part thereof

The terms deemed to be included in every such contract are *inter alia* as follows

(*i*) all payments of commissions to insurance agents shall be payable by the insurer direct or either by the chief agent or the special agent,

(*ii*) the special agent shall employ, at least two insurance agents and shall procure or cause to be procured through such agents in each calendar year new business of not less than Rs 50,000 on which at least the first year's premiums have been paid in full,

(*iii*) the special agent shall forfeit to the insurer 50 per cent of his total remuneration in any calendar year on his failure to appoint the minimum number of insurance agents and to procure the minimum amount of business as mentioned in (*ii*) above,

(*iv*) his contract shall automatically terminate on 31st day of March immediately following the second calendar year on his failure to comply with the conditions mentioned in item (*ii*) above in two successive calendar years, and

(*v*) the special agent will be paid the commission that is ordinarily payable to an insurance agent in the event of his procuring life insurance business without the services of an insurance agent but when such business is procured through an insurance agent his remuneration shall be in the form of an overriding commission [1]

Proviso to this sub-section confers discretionary power on the Controller to alter, to such extent as he thinks fit, all or any of the said terms mentioned above Where the contract is between (*a*) a co-operative life insurance society as defined in clause (6) of sub-section (1) of section 95, and (*b*) a co-operative society registered under the Indian Co-operative Societies Act 1912 (II of 1912) or (*c*) a co-operative society registered under any other law for the time being in force and acting as a special agent

7 Contract between a chief agent and a special agent —The contract between a chief agent and a special agent must also be in accordance with the provisions of sub-section (4) [2]

8 Certified copy of every contract to be filed with the Controller Sub section (5) —Sub-section (5) of this section imposes a duty on the insurer or the chief agent to furnish to the Controller a certified copy of every contract (i) between an insurer and a chief agent, (ii) between an insurer and a special agent, and (iii) between a chief agent and a special agent, within thirty days of his entering into such contract Intimation of any change in any such

1 *See* also Note 4 under S 40A *infra*. 2 *See* Note 6 above

contract must also be furnished by the insurer or the chief agent with full particulars of the change or changes made therein within the period of thirty days for the making of any such change The provisions of this section are mandatory

9 **Period of contract and its renewal Sub-section (6)** —Any contract between an insurer and a special agent or between a chief agent and a special agent must not be entered into for a period exceeding ten years at any one time So also renewal of such a contract must not be made for a period exceeding ten years at any one time just like the original contract but any option to renew any such contract given to any of the parties to the contract must not be enforced without the consent of the other even if the terms of the contract provide anything to the contrary, that is, even if a contract, provides that any party to it can have the option to renew the contract such option clause cannot be enforceable against the other without the latter's consent

10 **Termination of contract subsisting at the commencement of the Insurance (Amendment) Act, 1950 Sub-section (7)** —Sub-section (7) of this section purports to carry out the recommendation of the Select Committee which observes in this regard thus "In our opinion there is no need to terminate immediately existing contracts between insurers and chief agents, but they should, in any event, be terminated after the expiry of ten years from the commencement of the amending Act" The provisions of sub-section (7) are in mandatory language and enjoin that every contract between an insurer and a person acting on behalf of such insurer who, before the commencement of the Insurance (Amendment) Act, 1950 has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier That is, any contract between an insurer and a chief agent or between an insurer and a special agent subsisting on 1st September, 1950 must terminate after the expiry of ten years from the said date if such contract does not terminate earlier according to the terms of the contract itself Such contract must relate to procuring of life insurance business only

(*A*) *Modifications of contract subsisting Proviso 1 to sub-section (7)* —But any such contract subsisting on 1st September, 1950, must not subsist as per its terms contained therein but the contract must be modified by the parties thereto so as to bring it in conformity with this Act Modifications shall be made as follows

(*i*) as regards remuneration, it may be such as may be mutually agreed upon between the parties subject to a maximum of an overriding commission of 2½ per cent *plus* a further commission not exceeding 2¾ per cent on premiums in respect of which no commission is payable to any insurance agent, and

(*ii*) as regards its terms the contract must be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule in case of chief agent or special agent respectively

The commission above referred to would cover the businesses whether already procured or to be procured after the commencement of the said Amending Act of 1950 and in particular the business procured before the commencement of the said Act

(*B*) *Dispute to be referred to arbitration Proviso 2 to sub-section (7)* —Second proviso to sub-section (7) further provides that in the event of any dispute as

to the terms of any fresh contract, the matter shall be referred to arbitration Thus, any dispute arising between an insurer and a chief agent or an insurer and a special agent in respect of the terms of any fresh contract must be referred to arbitration according to the provisions of the Arbitration Act (X of 1940)

11 Commission in respect of contract subsisting on 1st January, 1949, but terminated before the commencement of the Insurance (Amendment) Act 1950 Sub-section (8) —Sub-section (8) of this section makes specific provisions for payment of commission to a chief agent or a special agent at a certain rate in respect of a contract between an insurer and any of such agents which was subsisting on 1st January, 1949, but has terminated or has been terminated by any of the parties thereto before the commencement of the Insurance (Amendment) Act, 1950 The commission or remuneration payable to a chief agent or a special agent in respect of the said contract on business procured before the termination of the contract must not exceed 2½ per cent as overriding commission *plus* a further commission of $3^3/_4$ per cent on premiums in respect of which no commission is payable to any insurance agent

Reading sub-sections (7) and (8) together, contracts between an insurer and a chief agent or a special agent are divided into two categories, *viz*, (*i*) those subsisting on the commencement of the Insurance (Amendment) Act, 1950 *i e* on 1st September, 1950, and (*ii*) those subsisting on 1st day of January, 1949, but terminated before the commencement of the said Amending Act *i e* before 1st September 1950 In both the categories of contract, the rate of commission at which it is payable to those agents is the same, *i e*, half per cent as overriding commission *plus* $3^3/_4$ per cent as commission when no commission is payable to any insurance agent

12 Renewal commission payable to special agent Sub-section (9) — Sub-section (9) of this section permits a special agent to receive any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent, that is to say, when an insurance agent is appointed as a special agent he is entitled to the renewal commission on renewal premiums on policies effected by him as an insurance agent prior to the date of his appointment as special agent

13 Dispute regarding the status of a person employing insurance agents Sub-section (10) —Sub-section (10) confers power on the Controller to decide and impose duty on the insurer and a chief agent or a special agent to refer to the Controller, any dispute arising as to whether a person is or was a chief agent or a special agent for the purposes of the Act The Controller's decision in this regard must be final

14 Maintenance of registers Sub-section (11) —Sub-section (11) of this section enjoins on every insurer to maintain two registers, *viz*, one for the chief agent and the other for the special agents appointed by him, and also upon the chief agent to maintain a register for special agents appointed by him The particulars to be entered in these registers are—

(*i*) the name and address of every chief or special agent, as the case may be,

(*ii*) the name and address of every special agent, in case of chief agent,

(*iii*) the date on which the appointment was made of every such agent, and

(*iv*) the date on which the appointment of every such agent ceased

Register of agents

43 (1) Every insurer and every person who acting on behalf of an insurer employs insurance agents shall maintain a register showing the name and address of every insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased

(2) *

(3) *

*

*

*

Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him , or

(*b*) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer to be in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent in any case , or

(*c*) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person

Explanation —For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer

(2) Any commission payable to an insurance agent under the provisions of clauses (*b*) and (*c*) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long as such commission would have been payable had such insurance agent been alive

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Refusal of payment of renewal commission to insurance agent prohibited Sub-section* (1)
(A) *Fraud meaning of*
(B) *Conditions to be fulfilled by an insurance agent to be entitled to commission Provisos* (*a*), (*b*) *and* (*c*) *to sub-section* (1)
(C) *"Service of an insurance agent" Meaning of—Explanation*
5 *Renewal commission payable to heirs of insurance agents Sub-section* (2)
6 *Right of agents to commission on transfer of business*

1 Legislative changes —This section was substituted by Act XLVII of 1950

2 Object and scope —The object of the section is to prohibit refusal of payment of renewal commission to an insurance agent on the ground merely of termination of his agreement except on the ground of fraud It also permits payment of such commission, on the death of the agent, to his heirs under certain circumstances

The right to recover renewal commission is a recurring right only be defeated if it is found by a competent Court that the the agency was on account of fraud If the termination of the

on account of fraud, then the agent would be entitled to the renewal commission [1]

The principle enunciated in this section is a departure from the general rule of the law of agency that an agent is not entitled to any commission after the termination of his agency except where there is an express or implied contract that the agency should be continued for any period of time. Eve in such a case the principal has the right to revoke the agency, when he make compensation to his agent provided such revocation is made without an sufficient cause [2] But the duties of an ordinary agent are not the same as those of life insurance agents as the duties of the latter unlike those of the former do not cease with the introduction of customers but such duties continue in the claim of their renewal commissions on their undertaking to induce the assured to pay the renewal premiums as they fall due Even in such cases in the absence of any special agreement, renewal commissions on renewal premiums could be claimed so long as the agency lasted [3]

This section is a counterpart of section 40 and it refers to only ag ments made after the Act and agreements made prior to the Act are sa only to the extent specified under sub-section (3) of section 40 [4] But to entitled to the benefits of this section the insurance agent must fulfil a one of the conditions laid down in clauses (a) to (c) of the proviso to sub-secti (1) of this section

3 **Applicability**—The provisions of this section are obviously appli- cable to life insurance agents who alone are entitled to renewal commission on renewal premiums under the Act The section is not well drafted but its effect is not that it cannot apply to any contract made before the Act came into operation It confers a right on an insurance agent which takes effect on the termination of his appointment, and if at that time the agent is an insurance agent he comes within the section, although at the time of his original employment he was not an 'insurance agent' as defined by the A t Thus, where an agency had been continuing from before the coming into force of the Insurance Act and was terminated as from 1st January, 1940 and the agent obtained the licence under section 42 on the same date the Privy Council held that this was not sufficient to make the agent an 'insurance ag nt for the purpose of the Act so as to entitle him to the benefit of this section [5] In the same case it had further been observed that the fact that a full time agent had with the consent of the employer done a small amount of outside business of a character not engaged in by the employer was not sufficient to deprv him of the advantages conferred by this section In the instant cas the agent was held to be entitled to damages for breach of contract on the basis of the benefits that would have accrued to him if his agency had not been wrong fully terminated on the ground that the notice before termination of agency was inadequate

Further for the applicability of this section so as to entitle an insurance agent to renewal commission he need not be a licensed insurance agent under the Act even after he ceased to do insurance work The Madras High Court has observed thus

> it is against sense and commonsense alike that an insurance agent who has ceased to do insurance work should keep his

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1 *Life Insurance Corpn. of India Central Office Bombay v Gurdial Singh* 1960 Punj 607

2 S 205 Indian Contract Act IX of 1872

3 *Empire of India Life Assurance Co Ltd v S Nona Ayyar* 44 MLJ 170

4 *Sohrabji Dhunjibhoy Medora v Oriental Government Security Life Assurance Co Ltd* 1944 Bom 166

5 *Sohrabji Dhunjibhoy Medora v Oriental Govt Security Life Assurance Co* 72 I A 315 50 C W N 73 1946 1 C 6.

insurance licence in force year after year by paying the insurance (licence) fee in order to earn the percentage on the renewal premia, even if he is entitled to it under section 44 (1) (*b*), (*c*)

'It will be something like asking a pensioned driver of a motor vehicle to keep his driving licence in force, if he wishes to draw the pension though he does not drive any car or vehicle or has anything to do with it Such a proposition will only keep the Government or other authorities in getting licence fees for no purpose at all, and cannot be countenanced by Courts' [1] The section has been applied to the Life Insurance Corporation of India

4 Refusal of payment of renewal commission to insurance agent prohibited. **Sub-section** (1) —Sub-section (1) of this section provides that no person shall refuse payment to an insurance agent of commission due to him on renewal premium in respect of life insurance business transacted in India merely on the ground of termination of his agreement even if there be contract between him and that agent providing for forfeiture or stoppage of payment of renewal commission to him on termination of his contract This section purports to overrule any clause in any contract between an insurer and an insurance agent or between the chief agent or the special agent and the insurance agent whereby forfeiture or stoppage of payment of insurance agent's renewal commission is provided The only ground on which such forfeiture or stoppage of payment of such renewal commission can be made on termination of his contract is on the ground of fraud, *i e*, when the contract can be avoided on the ground of fraud the insurance agent is not entitled to the benefit of this section on the avoidance of the contract

(*A*) *Fraud, meaning of* —Generally fraud means the obtaining of a material advantage by unfair or wrongful means it involves moral obloquy All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud Fraud in all cases implies a wilful act on the part of anyone whereby another is sought to be deprived by illegal or inequitable means, of what he is entitled to [2] Section 17 of the Indian Contract Act defines fraud and section 19 of the said Act provides that an agreement induced by fraud is voidable at the option of the party whose consent was so obtained In fraud there must be any one of the following ingredients, namely,—

(i) a suggestion, as a fact (*suggestio falsi*) of that which is not true by one who does not believe it to be true ,

(ii) an active concealment of a fact (*suppressio veri*) by one having knowledge or belief of the fact ,

(iii) a promise made without any intention of performing it ,

(iv) any other act fitted to deceive ,

(v) any such act or omission as the law specially declares to be fraudulent

An agreement is said to be induced by fraud where—

(*a*) the act had been committed by a party to the contract or with his connivance or by his agent ,

(*b*) the act had been done with intention to deceive and had actually deceived (because a deceit which does not deceive is no fraud according to Explanation of S 19 of the Indian Contract Act)

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1 *Oriental Govt Security Life Assurance Co v Ltd Krishnamurthi*, 1957 Mad 449 at p 451

2 Kerr on Fraud and Mistake 6th Ed pp 1 and 2.

(c) the deceit had been aimed at the party to the contract or his agent or with a view to induce the other party to enter into the contract, and

(d) any one of the ingredients of fraud was present [1]

(B) *Conditions to be fulfilled by an insurance agent to be entitled to commission* — *Provisos (a), (b) and (c) to sub-section (1)* —The provisos to sub-section (1) lay down the three conditions in (a) (b) and (c) any of which an insurance agent has to fulfil before he can claim the benefits of this section The conditions are—

(i) that he has been compelled to cease to act for an insurer and the Central Government is satisfied about the justification for his so ceasing to act for the insurer and a notification to that effect is published in the official Gazette [clause (a)] ,

(ii) that he has served the insurer continually and exclusively for ten years and thereafter is not in service of any other insurer [clause (c)] or

(iii) that he has served the insurer for at least five years and has procured policies assuring a total sum of not less than Rs 50 000 and the same remained in force on a date one year before his ceasing to act as such agent and his commission on renewal premiums does not exceed 4 per cent in any case [clause (b)]

Clauses (b) and (c) noticed in (iii) and (ii) above differ in three respects I irstly an insurance agent who has served exclusively for at least ten years is entitled to the percentage on the renewal premium irrespective of whether or not policies assuring a total sum of not less than Rs 50,000 were effected through him for the insurer Secondly he is entitled to such percentage on the renewal premium irrespective of the fact whether they were in force on a date one year before his ceasing to act as agent for the insurer Thirdly he is under a disability, as against an insurance agent who had worked only between five years and ten years in that case he could not claim the percentage on the renewal premium, if he directly or indirectly solicited or procured insurance business for any other person after he ceased to be an insurance agent for the particular company The natural interpretation of clause (b) can only be that policies more than Rs 50 000 in value effected by the insurance agent should have been in force on a date one year before he ceased to act as such In the same case it has been observed that the section does not contemplate persons considered to be retiring after service of ten years The phrase in clause (b) 'were in force on a date one year before his ceasing to act as such agent for the insurer' should be construed strictly and literally and not literally so as to mean policies which were in force after the payment of the percentage on the renewal commission for the previous year "[2]

Illustration

A was an insurance agent under *B* company for more than five years and less than ten years and ceased to be such agent on 14th December, 1950 He secured policies for Rs 54 500 which were in force within two years before his ceasing to be agent One policy of Rs 5 000, out of the above policies, lapsed for non payment of premia on 21st May, 1949 that is more than one year

1 *See* S 17 Indian Contract Act

2 *Oriental Govt Security Life Assurance Ltd* 3 *Co v Krishnamurti* 1957 Mad 449 *See* p 450 of A I Report of the same case

before he ceased to be agent, or in other words, this policy lapsed after *A* had received (when he was in service) the percentage on the renewal premia for the previous year *Held A* would not be entitled to any percentage on the renewal premium [1]

(*G*) *"Service of an insurance agent" Meaning of—Explanation* —The expression, "service of an insurance agent" for the purposes of this sub-section would mean his service under a chief agent of the insurer and such service shall be deemed to be service under the insurer

5 Renewal commission payable to heirs of insurance agents Sub section (2) —Sub-section (*2*) of this section permits payment of renewal commission to heirs of insurance agents if such agents were entitled to it on fulfilment of conditions laid down either in clause (*b*) or clause (*c*) of the proviso to sub-section (1) that is, where the agents had served the insurer for at least five years and had put in a business of at least Rs 50,000 and the same was in force at least one year prior to their ceasing to act , and where they had served the insurer exclusively for ten years and did not serve under any other insurer after their ceasing to act

But the heirs of the insurance agents are not entitled to renewal commission when such agents' services ceased according to clause (*a*) of the said proviso and although such agents were entitled to renewal commission

6 Right of agents to commission on transfer of business —The insurance agent's rights to renewal commission as conferred by this section are not in any way affected by the insurer's business being transferred to another Such rights against insurer remain But he may be without any remedy when he cannot realise the amount due by enforcing that right when the transferor company has no assets left after the transfer out of which to pay the commission This section does not say that an insurance company shall not be entitled lawfully to deal with its assets where the effect of such dealing might be that nothing is left out of which the agents can be paid their commission [2]

Power to call for information

44A For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C, the Controller may by notice—

(*a*) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary,

(*b*) require an insurer, principal agent, chief agent or special agent to submit, for his examination at the principal place of business of the insurer in India any book of account, register or other document, or to supply any statement which may be specified in the notice ,

(*c*) examine any officer of an insurer or a principal agent, chief agent or special agent on oath in relation to any such information, book, register, document or

1 *Oriental Govt Security Life Assurance Co Ltd v Krishnamurthi* 1957 Mad 449

2. *Shyamapada v Controller of Insurance* S C 1355 at p 1358

statement and administer the oath accordingly, and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Requirement as to information Clause (a)*
4 *Requirement as to examination of any document or book of account Clause (b)*
5 *Examination on oath of any officer of the insurer or the agent Clause (c)*

1 Legislative changes—Section 44A was inserted by Act XLVII of 1950 and the word 'India' occurring in clause (*b*) was substituted by Act LXII of 1956

2 Object and scope—The object of the section is to clothe the Controller with power to examine for himself whether an insurer, principal agent, chief agent or special agent has been complying with the obligations imposed on each of them provided by the preceding sections 40A, 40B, 40C, 42B and 42C, namely, with regard to limitations of expenditure on commission of expenses of management in life insurance and general insurance business and of employment of principal, chief and special agents

For the purpose of ensuring such compliance the Controller has been given the discretion to call for certain informations as provided in claus (*a*) to require any of them to submit any documents or registers for his examination as provided in clause (*b*) and to examine on oath any officer of an insurer or any of the agents aforementioned as provided in clause (*c*) of this section

This section also enjoins in mandatory language on the said insurer or any of the agents aforementioned to comply with any of the requisitions made by the Controller within the time specified in the notice The Controller on the other hand, should make requisitions on them or any of them by notice as to what and in respect of which the insurer, the principal agent, the chief agent or the special agent has to comply with The notice in this regard should be specific and should neither be vague nor general

3 Requirement as to information Clause (a)—The Controller has the discretion to require from the insurer or any or all of the agents *viz* principal, chief or special agents such information as the Controller may consider necessary and he may also require that the information to be furnished in this regard must be certified by an auditor or actuary

4 Requirement as to examination of any document or book of account Clause (b)—The Controller has also the discretion to require an insurer or any of the agents aforementioned to submit any book of account, register or other document for his examination at the principal place of business of the insurer in India He has also the power to require any or all of them to supply any statement which may be specified in the notice

5 Examination on oath of any officer of the insurer or the agents Clause (c)—The Controller has also the power to examine on oath any officer of an insurer or a principal agent, chief agent or special agent but such examination on oath must be in relation to any information furnished to him as above or book, register, document or statement The Controller himself can administer the oath

45 No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose

Policy not to be called in question on ground of misstatement after two years

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal

SYNOPSIS

1 *Legislative changes*
2 *Object*
3 *Scope*
4 *Applicability*
5 *Contract of insurance, proposal and acceptance*
6 *Proposal form, its importance*
7 *Declaration form and medical report, their importance*
8 *Effect of non-disclosure and misrepresentation*
(A) *Time limit for disclosure*
(B) *Facts which need not be disclosed*
(C) *Misrepresentation, what is ?*
(D) *Effect of misrepresentation*
(E) *Misrepresentation and fraud, difference*
(F) *Misrepresentation, its test*
9 *What facts are material*
(A) *Materiality is a question of fact*
(B) *Types of material fact—Some instances*
(C) *Inquiries by insurers, principle of construction*
10 *Fraudulent suppression of material facts, policy is vitiated*
11 *Agent of the insurer filling in the proposal form, effect of*
12 *Statements in proposal and declaration forms recorded in English, proposer not knowing English, effect of*
13 *Policy when can be avoided, burden of proof*
14 *Calling for proof of age, Proviso*

1 Legislative changes—(*a*) The words "was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made" were substituted for the words, "was on a material matter and fraudulently made" and the words "or that it suppressed facts which it was material to disclose" occurring in the section were added by Act XIII of 1941,

(*b*) the proviso to the section was inserted by Act VII of 1944

2 Object—The object of the section is to militate against the rigid and stringent rule of warranties which generally form the basis of life insurance contracts Contracts of insurance unlike any other contracts are contracts *uberrimae fedei i e*, in such contracts the duty is cast upon the assured to disclose all material facts known to him but unknown to the insurer and the former is bound to tell the latter everything which may be supposed likely to affect the latter's judgment A warranty is an "express or implied statement of something which the party undertakes shall be part of a contract and though part of a contract yet collateral to the express object of it "[1] So "if a particular description or representation is expressly made the basis of the contract, that condition must be satisfied, whether the deviation be in fact material or not And in such case it is sufficient if that condition be satisfied for an express condition excludes any implication beyond its terms "[2] The tacit observance of warranty has made the contract or treat it as void ev The assured has had to depend much upon the good sense of the insurer T reason being that the insurer can avoid the contract or treat it as rigid a on a subtle deviation The object of warranty is to provide against fraud bein perpetrated upon the insurer but the rule be extended to a length so rigid that to avoid the contract on slight or succinct deviation it would serve no useful purpose rather it would be an engine of oppression to the assured Strict compliance with warranties had been given effect to both in Indian and English courts [3] The contract or insurer T So

Fletcher Moulton L J, expressed strong disapproval of the way in which the proposal for insurance is made when all the answers in the proposal form are made the subject of warranties so that a single inaccuracy would avoid the policy and said 'I wish I could adequately warn the public against such practices on the part of insurance offices I am satisfied that few of those who insure have any idea how completely they leave themselves in the hands of the insurers should the latter wish to dispute the policy when it falls in To make the accuracy of these answers a condition of the contract is a contractual act, and if there is the slightest doubt that the insurers have failed to make clear to the man on whom they have exercised their right of requiring full information that he is consenting thus to contract we ought to refuse to regard the answers given as being conditions In other words the insurers must prove by clear and express language, the *animus contrahendi* it will not be inferred from the fact that questions were answered and that the party interrogated declared that his answers were true "[4]

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1 *Chawter* v *Hopkins* cited in *Aerawr* v *Castilla* 96 L J C P 263 see also *Bru Coomars* 2 Cal 816 *Salamander Fire Insurance Co Ltd* 32

2 Leake on Contract p 282 *Thomson* v *Weems* (1874) L R Q B 328 *Dawsons* v *Bonnin* (1922) 2 A C 413 *Anderson* v *Fitzgerald* 4 H L C 484 *New York Life Insurance Co* v *Phoebe Stella Garbis* 27 Cal 593 *Oriental Government Security Life Assurance Co* v *Narasimhachari* 25 Mad 183 ; *Lakhmi Shankar* v *Gresham Life Assurance Society* 1922 Bom 582 *Great Eastern Life Assurance Co* v *Don Hira* 55 Born. 124 1931 Bom 146 *Mallappa Chettiar* v *Laxmi Assurance Co Ltd* I L R (1944) Mad 842 ; 1944 Mad. 281 ; *Light of Asia Insurance Co* v *Karotaya Debi* 1936 Cal 437 *Western India Life Insurance Co* v *Atma Sarkar* I L R (1942) I Cal 100 46 C W N 759 1942 Cal 412 *Manufacturers Life Insurance Co Ltd* v *Haridas Debi* 42 C W N 823 1939 Cal 8 *Bharat Insurance Co Ltd* v *Subal Chandra Mander* 48 C W N 263 *Hemanta Kumar Alliance and Stuttgarter Life Insurance Co Ltd* 1938 Cal 120 *Asia Insurance Co* v *Asa Ram* 15 Luck 360 1940 Oudh 212 *Shivkumar Radhakrishandas* v *North British Mercantile Insurance Co* (1939) Kar 611 1939 Sind 224 *East and West Life Insurance Co Ltd* v *Folla Lemkish* 1944 Mad 559 *Joel* v *Law Union and Crown* (1908) 2 K B 863 see also *Heelion* v *Hardisty* (1857) 8 E and Bl 232 300

In the United States of America, the law is that in the absence of statute to the contrary, warranties in a life insurance policy must be literally true or fulfilled, otherwise recovery on the policy may be barred, irrespective of the good faith of the insured or the materiality of the thing warranted But the common law distinction between representations and warranties is abrogated by statutes which prevent a breach of warranty from avoiding the company's liability except where the warranty relates to a matter material to the risk Such statutes are constitutional and must be literally construed in favour of the insured Even the parties cannot avoid the statute by an express stipulation that the policy shall be null and void on account of false statements, notwithstanding any statutes or laws to the contrary or that such statements shall be deemed material, nor can the statute be avoided by stipulating that the policy shall be construed solely by the laws of another State, such stipulation being against public policy [1]

Provisions similar to those in this section may be found in the Ontario Insurance Act thus The statements made by the insured, or the person whose life is insured, in the application, on the medical examination (if any), or in any statements or answers furnished in lieu of a medical examination other than fraudulent statements or statements erroneous as to age, shall be deemed to be true and incontestable after the contract has been in force for two years "[2] The said Act also provided 'Provided that in the absence of fraud the contract shall not by reason of such failure to disclose or misrepresentation be voidable after the contract has been in force for two years during the lifetime of the person whose life is insured "[3]

The object of the section is in line with the modern tendencies of life insurance companies of having inclined towards the formation of insurance contracts without any warranty clause Its object may also be gathered from the observations of the Select Committee thus 'If the insurer does not discover and question the falsity of any such statement in two years he ought not to be allowed to take cover behind it thereafter We have excepted from the protection afforded by the clause, cases in which the insurer can show that the false statement was fraudulently made with knowledge and concerned a material error "

3 **Scope**—This section makes a policy of life insurance incontestable (i) when such policy was issued before the commencement of the Insurance Act after the expiry of two years from the commencement of the said Act, and (ii) when such policy was issued after the commencement of the said Act, it would remain incontestable after the expiry of two years from the date of issue But such incontestability must relate to misstatements or untrue answers and unless the insurer can establish that—

(*a*) such statement was on a material matter, or

(*b*) it suppressed facts which it was material to disclose,

(*c*) it was fraudulently made by the policy-holder, and

(*d*) that the policy-holder knew at the time of making it that the statement was false, or

that it suppressed facts which it was material to disclose [4]

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1 45 C. J S pp 396 and 410.
2. *See* S 125 (2) of the said Act
3 *See* S 126 Proviso of the said Act
4 See *Mukoolal* v *Life Insurance Corporation of India* 1962 S C 814 *Lakshmi Insurance Co Ltd* v *Bibi Padmawati* I L R (1961) Punj 353 1961 Punj 253 *Assurance Co* v *Sulochana*,

But an exception has been made in the rule enunciated in the section itself in the proviso to that section with regard to the proof of age, the proof of which the insurer will be entitled to call for from the assured at any time if the same had not been proved to the satisfaction of the insurer before the policy was issued or after the said policy was issued irrespective of the fact that the requisition of the proof of age had been made two years after the policy was issued Although the insurer has been given the right to call for proof of age and to adjust the terms of the policy on subsequent proof that the age of the life insured was incorrectly stated in the proposal, he has no right to call the policy in question The adjustment of the terms of the policy on account of an under-statement of age or otherwise would obviously refer to the increase or decrease of the premium The incontestability of the policy on grounds other than those stated in the section remains In other words, the statement with regard to the age in the proposal form is not regarded as one made on a material matter

The statement referred to in the section may relate to any of the following, namely,—

(*i*) statement made in the proposal for insurance by the insured, or

(*ii*) statement made in any report of a medical officer, it also includes a statement made by the proponent before such medical officer who also bases part of his report on such statement, or

(*iii*) statement of a referee whom the insured names in the proposal and to whom the insurer refers and when the latter makes a statement in respect of the insured on such reference by the insurer, or

(*iv*) statement of friend of the insured, sometimes insurers require one or two reports from a friend or friends of the insured who testify as to the pecuniary condition and the general health of the insured, or

(*v*) statement made in any other document leading to the issue of the policy, under this head the agent's report should be included The insurer ordinarily takes agent s report into account before issuing the policy

4 **Applicability**—The provisions of this section are applicable to contracts of life insurance and hence they are applicable to holders of policies of life insurance The provisions do not apply to any other contracts of insurance such as fire or marine Policies of fire or marine insurance are renewable from year to year and non-applicability of these provisions are obvious The provisions of the section have been applied to policies of life insurance effected before the commencement of the Insurance Act after the expiry of two years from the date of commencement of the said Act that is the policies effected before the commencement of the Act had been treated as if they were effected on the date of the commencement of the Act and hence benefits of the section were given to them after the expiry of two years from the date of commencement of the Act During these periods of two years the insurer has the right to call in question any statements above referred to on the ground that they or any of them were or was inaccurate or false irrespective of whether such statements or statement were or was on material matters or on a material matter, as the case may be

The section shall also apply to the Life Insurance Corporation of India

5 Contract of insurance, proposal and acceptance —A contract of insurance is created like any other contract by proposal by the proponent and acceptance by the insurer Thus, where *A* offers to effect an insurance with *B*, this offer alone does not make any legally binding contract unless it is accepted by *B* as a mere offer creates no legal right until its acceptance and it may lapse or may be withdrawn or revoked before its acceptance or it may not be accepted at all The acceptance of the offer, on the other hand, must be absolute and unfettered with any condition Thus, where *A* makes an offer to *B*, the latter has the option to accept or reject it but if he chooses to do neither he may also say that *A*'s offer will be accepted on such and such altered form or subject to certain conditions and in so doing *B* makes a counter offer which *A*, in his turn may either accept or reject *B*'s acceptance may be in the words that "no assurance can take place until the first premium is paid" This acceptance being not absolute and fettered with a condition, it should be treated as a counter-offer which *A* may either accept or reject The so-called proposal of *A* is a preliminary negotiation and so-called acceptance of *B* is really the counter-offer so that no agreement can be reached without further acceptance of *A* on paying the first premium [1] The court will not also enforce a contract of insurance where there is such a stipulation in the policy until the premium has been paid [2]

But where the policy recites that the premium was paid at the time of the execution of the policy though in fact it was not paid it was construed to be a waiver of the stipulation and the contract was held to be a concluded one and binding on both parties,[3] or where the policy is delivered without realising the premium, it raises a presumption that a credit is intended and is a waiver of the condition of prepayment of the premium [4] Again where it is clear that the acceptance is intended to be identical with the proposal, the contract is complete notwithstanding some trivial inadvertent variance [5] Even where there was, in fact, no proposal as the signature of the person claiming was not made by him or under his authority, it was held nevertheless that a company which issued the policy and accepted premiums on the basis of the proposal could not be allowed to deny the existence of the proposal and contract [6] Even where an insurer fails to decline an application for insurance, it may amount to acceptance [7]

An agreement to agree does not constitute a binding contract although an agreement on the usual terms or at the usual rate of premium does [8]

Where a contract is made by post acceptance is complete as soon as the letter of acceptance is posted,[9] and the subsequent delay or loss of the letter

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1 *Canning v Farquhar* (1886) 16 Q B D 727

2 *Bonardi Devi v New India Assurance Co Ltd* 1959 Pat 540 *Ocean Accident and Guarantee Corporation Co Ltd v D K Patkar* 1935 Bom 236 *see* also *Looker v Law Union and Rock Insurance Co Ltd* (1928) 1 K B 554 *Re Yager and Guardian* (1912) 108 L T 38 *South British Insurance Co v Stenson* (1928) 30 Bom L R 745

3 Roberts v *Security Company* (1897) 1 Q B 111 doubted in *Equitable Fire and Accident Office Ltd v Charg Ho Horg* (1907) A C 96

4 *Universal Life Insurance Society In re* 23 Cal 320

5 *Colonial Insurance Co v Adelaide Marine Insurance Co* 12 A C 128

6 *Pearl Life Assurance Co v Thonton*, (1909) 2 K B 288 *see* also *General Accident Insurance v Cronk* (1901) 17 T L R 235 but see *South East Lancashire Insurance v Crosdale* (1931) 40 Ll L R 22.

7 *Smith v Merchants Fire Assurance of New York* (1925) 3 W W R 91

8 *Nicolent v Simmonds* (1953) 1 Q B 543 but see *British Electrical v Patley* (1953) 1 W L R 285 where in a similar case it was held to be no contract *see* also *Goldstein v State Assurance* (1922) 10 Ll L R 604

9 *Taylor v Merchants Fire Insurance* (1850) 9 How 390.

in the course of transit is immaterial [1] But where a contract is made by direct communication, the contract is complete only when the acceptance is received by the offerer [2]

"Where the proposer and insurer are at cross purposes the result is *non est factum* and if premiums have been paid in the mistaken belief that there was an effective contract of insurance they are recoverable by the pe who has paid them on account of money had and received to that p use" [3]

6 Proposal form its importance—The offer thus spoken of is ma in the proposal form which is prepared in the form of questionnaires by th insurer and the assured is to answer each item of the questions Th questions are directed towards the proponent's position in life, his age, sum to be assured the object of the assurance the name of his attendant, the name of one of his friends who can testify to his state of health and habits whether he has ever proposed for insurance to any oth.r insurer with its results, i e, whether the same has been accepted or refused and the like

This proposal or application is then the first step in the making of a contract of insurance through which the assured supplies to the insurer particulars of the risk which he wishes him to undertake In answering these questions a great d-gree of responsibility rests with the assured, for not only must he state fully all that he is asked to answer therein but also he must state all that is, in fact material to the risk—the reason being that the insurer is ignorant of all the factors governing the hazard which are known to the assured and hence a duty is cast upon the assured to disclose all those factors so as to let the insurer know as to whether the risk should be undertaken or not The contract of insurance is a contract of the utmost good faith *uberrimae fides* [4] and 'there is no class of documents as to which the strictest good faith is more rigidly required in courts of law than policies of assurance' [5] This 'utmost good faith is not unilateral but is also requir d from the insurer too who is also under a similar duty to disclose [6] The doctrine requiring utmost good faith mutually applies equally to all kinds of insurance including life insurance' [7]

The statement made in the proposal form is 'a statement made in the proposal for insurance" referred to in this section and the proponent should be cautious that it is 'neither inaccurate nor false' lest the contract may be avoided within two years from the issue of the policy and thereafter on the grounds mentioned in the section

7 Declaration form and medical report, their importance—In a life insurance contract the proponent for insurance has to sign a declaration confirming the truthfulness of the answers made therein The declaration form is also issued in the form of questionnaire wherein several questions are framed which chiefly relate to the state of health of the proponent These questions ordinarily relate to whether the proponent has ever suffered from any disease of the brain or nervous system, of the digestive organ, of throat or

1 *Household Fire Insurance* v *Grant* (1879) 4 Ex D 216 *Henthorn* v *Fraser* (1892) 2 Ch. 27 *Eastes* v *Miles* (1955) 9 Q. B 327 *see also Powell* v *Lee* (1908) 99 L T 284 *Johnston* v *Prudential Assurance* (1946) 1 A C ltc 1943 49 p 55 *noted in* Mac Gillivray Insurance Law Vol 1 p 315

2 *Rozanes* v *Bowen* (1928) 32 Ll L. R 98 *Mackenzie* v *Coulson* (1869) L. R 8 Eq 369 at p 375 *Re Bradley and Essex Accident* (1912) 1 K. B 415 *Provincial Insurance* v *Morgan* (1933) A C 240

3 *Joel* v *Law Union and Crown* (1903) 2 K. B 863 *supra*.

lungs of the circulatory system, of the urinary or generative organs or has suffered from kala-azar, malaria, filariasis, enteric fever, leprosy, beri beri and the like The object of the declaration form is to obtain a firsthand information of the state of health of the proponent, the risk of whose life the insurer is to undertake In the same form, a short family history of the proponent has to be stated touching on the health of his near relatives, such as, father, mother, brother and sister The proponent is to sign the declaration contained in the said form in the form of answers in the presence of the insurer's medical officer He has to declare therein that the answers and statements are full and true and that he has not withheld or concealed any material information or circumstance tending to shorten life and he does thereby agree that the declaration shall be the basis of the contract

To safeguard the interests of the insurer a medical report on the state of health of the proponent by the medical officer of the insurer is also sent along with the proposal and declaration forms The proponent is also required to answer the questions put by the medical officer to the best of his knowledge,[1] and to name his usual medical attendant and when there is no such qualified one the name of the quack should be mentioned.[2] The proponent is not excused from making full disclosure of all facts material to the risk when he is questioned by the insurer's doctor although he has already done so in the proposal form.[3] Even existence of written questions and answers does not absolve him from answering oral questions truthfully.[4] The declaration and medical report are important as they are included as 'statement in a report of a medical officer' and also 'in any other document leading to the issue of the policy' within the meaning of this section and any inaccuracy or falsity therein without it being material may render the policy liable to be avoided within a period of two years from its issue or it being material on grounds mentioned in the section after the said period of two years

8 **Effect of non disclosure and misrepresentation** —As the contracts of insurance are made upon the basis of representations upon the truth or falsity of which the validity of the contract depends, a non disclosure of any material circumstances or a misrepresentation however unmentional has the same effect as fraud in vitiating the contract.[5] The assured is bound to disclose and truly represent all the facts within his knowledge concerning the risk which are material for the underwriter to know and the non-disclosure or misrepresentation of any such fact gives the underwriter an election[7] to avoid the contract, as in the case of fraud although not accompanied by any fraudulent intention.[8] But the aggrieved party has the option to carry on with the contract or to avoid it.[9] The duty to disclose is not an implied term of the contract itself[8], but unlike fraud or a breach of condition non disclosure by itself does not give rise to a claim for damages but the only remedy lies in avoiding the whole contract.[9] The aggrieved party must make his election and must not wait being put on inquiry to avoid the contract when he (i) knows all the facts, or (ii) has had a reasonable time in which to make up his mind.[10]

1 *Huckman* v *Fernie* (1838) 3 M and W 505 *Everett* v *Desborough* 5 Bing 503
2 *Delahaye* v *British Empire Mutual Life Assurance Co* 13 T L R 245
3 *Joel* v *Law Union and Crown* (1908) 2 K B 863 at pp 876-878
4 *Wainwright* v *Bland* (1836) 1 M and W 32 at p 35
5 Le keton Contract p 280
6 *Carter* v *Boehm* 1 Wm Bl 593 97 E R 1162 *D'Iglish* v *Jarvis* (1850) 2 Mac G 231 *Joel* v *Law Union and Crown* (1908) K B 863
7 *Morrison* v *Universal Marine*, (1872) L R 8 Ex 40
8 *Merchants' and Manufacturers' Insurance* v *Hunt* (1941) 1 K B 295 at p 313
9 *Glasgow Assurance* v *Symondson* (1911) 104 L T 254 at p 258.
10 *Evans* v *Bartlam*, (1937) A C 473 *Mc Cormick* v *National Motor*, (1934) 40 Com Cas 76 *Simon Haynes* v *Beer*, (1946) 78 Ll L R 337

(*A*) *Time-limit for disclosure* —The duty to disclose ordinarily extends the stage of negotiations preceding the formation of the contract,[1] but extends up to the moment when a contract is concluded.[2] In case of renewa when insurer's assent is necessary fresh facts material to the risk must also b disclosed.[3]

(*B*) *Facts which need not be disclosed* —The assured is not under a duty to disclose the following facts unless he is interrogated on them by the insurer

(*i*) facts which he does not know, a "man can only disclose what he knows" and 'nothing else,"[4]

(*ii*) facts which diminish the risk[5]

(*iii*) facts within the knowledge of the insurer, "The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of business, as such, ought to know,"[6]

(*iv*) facts of which information is waived by the insurer[7]

(*C*) *Misrepresentation, what is* — 'Misrepresentation means and includes—

(1) the positive assertion, in a manner not warranted by the informa tion of the person making it, of that which is not true, though he believes it to be true,[8]

(2) any breach of duty, which without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him[9]

(3) causing however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement[10]

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1 *Whitwell* v *Autocar Fire* (1927) 27 Ll L R 418

2 *British Equitable* v *G W R* (1869) 20 L T 422 *Allis Chalmers* v *Fidelity Deposit* (1916) 32 T L R 263 (H L) *Looker* v *Law Union* (1928) 1 K B 554 *supra*

3 *Pim* v *Reid* (1843) 6 Man and G 1 at p 25 *Re Wilson and Scottish Insurance*, (1920) 2 Ch 28

4 *Hearts of Oak Building Society* v *Law Union Insurance* (1936) 2 All E R 619 at p 625 *Hellen* v *Hardsty* (1857) 8 E and B 232 ; *Steele* v *Fairlie* (1833) 6 C and P 1, *Peel* v *Law Union* (1908) 2 K B 863 *New India Assurance Co Ltd* v *T S Raghavareddi* 1961 Andhra 295

5 *Carter* v *Boehm* 1 Sm L C 474 *see* also S 18 (3) Marine Insurance Act 1906

6 S 18 (3) of the said Act *see* also *Harrower* v *Hutchinson* (1870) L R 5 Q B 584 (the insurer is presumed to know what other insurers in the same business know) *British Marine* v *Gaunt* (1921) 2 A C 41 *Vallance* v *Dewar* (1808) 1 Comp 503 (trade usages) ; *Foley* v *Tabor* (1861) 2 F and F 663 *Friere* v *Woodhouse* (1817) Holt N P 572 (knowledge derived through perusal of Lloyd's lists) ; but *see London General* v *General Marine* (1921) 1 K B 104

7 *Greenhill* v *Federal Insurance* (1927) 1 K B 65 (where the insurer ought to have enquired on receiving certain information) *Becker* v *Marshall* (1922) 12 Ll L R 413 (where the insurer has failed to ask further questions) *Ferrans* v *Marine and General* (1859) 2 L and E 317 (where the answers allowed to remain incom plete) *Marcovitch* v *Liverpool Victoria Friendly Society* (1912) 28 T L R (where blanks were left to remain in the proposal form) but *see Robert* v *Avon Insurance* (1955) 2 Ll Rep 240 *Forbes* v *Edinburgh Life* (1832) 10 S (Ct of Sess) 451 *contra*

8 See *Mohan Lall* v *Gangas Mulls* 4 C W N 369 *Pertab Chunder* v *Mohendra Nath* 17 Cal 291 (P C) This clause is sometimes called Construc tive fraud see *Oriental Bank Corporation* v *Fleming* 3 Bom 242 at p 267 *With* v *O'Flanagan* (1936) 1 Ch 575 contract *uber rimae fidei* comes under this clause S 18 Indian Contract Act 1 *see* also *Kennedy* v *Panama Mail Co* (1867) 2 Q B 580 *Ocean Steam Navigation Co* v *Soonder Das* 14 Bom 241

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"If there is information given, be it quite innocent, which is not a matter of contract, and never becomes a matter of contract, yet, nevertheless, if it is inaccurate, it can be used to avoid the policy or policies in question"[1]

(*D*) *Effect of misrepresentation* —The effect of misrepresentation, when a person is induced to enter into a contract by such misrepresentation, is that he may—

(i) affirm the contract and insist on the representation being made good, if that is possible,[2]

(ii) rescind the contract,[3]

(iii) rely upon the misrepresentation as a defence to an action on the contract[4]

(*E*) *Misrepresentation and fraud, difference*—

The essential differences between 'misrepresentation' and 'fraud' are that—

(i) in fraud there is an intention to deceive but there is no such intention in 'misrepresentation' which may be innocent,

(ii) in fraud, the person defrauded has his right to an action *ex delicto* over and above in avoiding the contract but in representation, the person complaining can avoid the contract only,

(iii) in an action for avoidance of contract on the ground of misrepresentation it would be a good defence to say that the plaintiff had the means of discovering the truth but such plea is not available to him in case of fraud

A contract can be avoided on proof that one party induced the other to enter into it by misrepresentation of material facts although such misrepresentations may not have been fraudulent[5] But the principal difference between fraud and misrepresentation is that in the one case the person making the suggestion does not believe it to be true and in the other he believes it to be true, though in both the cases it is a misrepresentation of fact which misleads the promisor[6]

In order that a plaintiff may succeed on the ground of innocent misrepresentation, it is necessary that three things should be established He must, first, show that the language relied upon does import or contain a representation of some material matter, second, he must show that the representation is untrue and third, he must show that the plaintiff in entering into the contract was induced so to do in reliance upon it[7]

(*F*) *Misrepresentation, its test*—

It is a wrong method of approach to construe the language of representation as the court thinks it should be construed according to the ordinary meaning of the words used The question is not whether the defendant in

1 *Graham* v *Western Australian Insurance* (1931) 40 Ll L R 64 at p 66 , *see* also *Goldin* v *Royal London Auxiliary Insurance Co Ltd* (1914) 30 T L R 350 , *Merchants and Manufacturers Insurance Co* v *Hunt* (1941) 1 K B 295 C A *Zurich General Accident and Liability Insurance Co* v *Leven* (1940) S C 407

2 *See* para 2 of S 19 of the said Act

3 *See* S 35 (*a*) Specific Relief Act 1 of 1877

4 *See* also *Morrison* v *Universal Marine Insurance Co* (1873) L R 8 Ex 197 , *United States Machinery Co* v *Brunet* (1909) A C 330 (P C) *see* also cases cited under Note B *supra*

5 *Lagunas Nitrate Co* v *Lagunas Syndicate* (1899) 2 Ch 392.

6 *Nisar Ahmad Khan* v *Parsottam Chandra* 53 374 1931 All 154 , *see* also *Prem Chand* v *Ram Sahai* 1932 Nag 148

7 *Broom* v *Raphael* (1958) 2 W L R 647

any given case honestly believed the representation to be true in the same assigned to it by the court on an objective consideration of its truth or falsity, but whether he honestly believed the representation to be true in the sense in which he understood it, albeit erroneously when it was made This general proposition is no doubt subject to limitations For instance the meaning placed by the defendant on the representation made may be so far removed from the sense in which it would be understood by any reasonable person so as to make it impossible to hold that the defendant honestly understood the representation to bear the meaning claimed by him and honestly believe it in that sense to be true [1]

9 What facts are material —The border line between what is material and what is not material is often so faint and dim that there is always a danger of one being taken for the other Hence one has to be careful in drawing a distinction between a fact which is material and a fact which is not [2]

Any fact which tends to suggest that the life insured is likely to fall short of the average duration is a material fact So also any fact the knowledge or ignorance of which would materially influence an insurer in making the contract or in estimating the degree and character of the risk or in fixing the rate of premium is material [3]

The test of materiality of a fact depends not on what the assured thinks or the insurer thinks but whether a prudent insurer would be influenced in his judgment if he knew of the fact [4] What is regarded as material by the "more experienced and intelligent insurers" carrying on the business in question at the time is what matters,[5] and the general practice of the insurers is relevant in this respect [6] In English law, the judgment of a prudent insurer, i e what would a reasonable assured consider material" has been adopted in the Marine Insurance Act, 1906, to be the test for determining materiality of a fact and the same test is also applied in non marine insurance contracts [7] As a general proposition it has been accepted that a fact which affects the risk is material and it will have no bearing on the risk itself [8]

(*A*) *Materiality is a question of fact*—

The question of materiality is a pure question of a fact and should be decided with respect to the facts disclosed in each particular case [9]

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1 *Aberheim* v *De Mare* (1949) 3 W L R 108
2 See *Ratan Lal* v *Metropolitan Insurance Co Ltd* 1 L R 37 Pat 1336 1959 Pat 413
3 *Benarasi Deb* v *New India Assurance Co Ltd* 1959 B L J R 425 1959 Pat 940 see also in this connection the English Statutes such as S 18 Marine Insurance Act 1906 and S 10 (5) Road Traffic Act 1934
4 See *Ionides* v *Pender* (1874) L R 9 Q B 531 ; *Tate* v *Hyslop* (1885) 15 Q B D 368 *Rivaz* v *Gerussi* (1880) 6 Q B D 222 *Lindenau* v *Desborough* (1828) B and C 586 *London Assurance* v *Mansel* (1879) 11 Ch D 363 *Beauchamp* v *Nathonal Mutual* (1937) 3 All E R 19 *Glasgow Assurance* v *Symondson* (1911) 104 L T 254 *Rs Yager and Guardian* (1912) 108 L T 38 *Bates* v *Hewit* (1867) L R 2 Q B 595 *Associated Oil Carriers Ltd* v *Union Insurance of Canton* (1917) 2 K B 184
5 *Ionides* v *Pender* (1874) L R 9 Q B 531 *Tate* v *Hyslop* (1885) 15 Q B D 368 *Rivaz* v *Gerussi* (1880) 6 Q B D 222 *Lindenau* v *Desborough* (1828) B and C 586 *London Assurance* v *Mansel* (1879) 11 Ch D 363 *Beauchamp* v *Nathonal Mutual* (1937) 3 All E R 19 *Glasgow Assurance* v *Symondson* (1911) 104 L T 254 *Rs Yager and Guardian* (1912) 108 L T 38 *Bates* v *Hewit* (1867) L R 2 Q B 595 *Associated Oil Carriers Ltd* v *Union Insurance of Canton* (1917) 2 K B 184
6 *Gardiestone* v *North British* (1870) L R 11 Eq 197
7 *See* S 18 (2) of the Marine Insurance Act 1906 and *Becker* v *Marshall* (1922) 12 Ll L R 413 C A at p 416 *Lindenau* v *Desborough* (1828) 8 B and C 586 ; *London Assurance* v *Mansel* (1879) 11 Ch D 363 ; *Joel* v *Law Union* (1908) 2 K B 863 *Mutual Life of New York* v *Ontario Metal Products* (1925) A C 344 (P C) applied in *Zurich* v *Morrison* (1942) 2 K B 53
8 *Seaton* v *Burnand* (1900) A C 135 H L *Dimsdons Ltd* v *Bonsun* (1922) 2 A C 413 H L *Morrison* v *Muspratt* (1827) 4 Bing 60 *Perrins* v *Marine etc Insurance Society* (1809) 2 E and E 317 *Lindenau* v *Desborough* (1828) 8 B and C. 586 *Seaton* v *Heath* (1899) 1 Q B 782, *Morrison* v *Muspratt* (1827) 4 Bing 60 ; *Higgins* v *Ripley* (1815) 6 Taunt 186
9 *Seaton* v *Heath* (1899) 1 Q B 782,

materiality is not question of belief or opinion tested subjectively [1] It being a question of fact evidence of experts as to insurance practice may be adduced [2]

(B) Types of material fact, some instances

Certain general propositions are well established as to types of material fact although there can be no rules of universal application as the question of materiality, as has already been noticed, depends on the circumstances proved in evidence in each case Nor can the decided cases give more than an indication of what conclusion a court or arbitrator would come to in any particular case These decided cases rule as a matter of law whether a particular fact is capable of being material and guidance may be had from the dicta as to the test to be applied [3]

The following are some instances of types of material fact

Ordinarily, material facts are grouped into two types namely, (*i*) facts affecting the physical hazard, *i e*, any fact is material which leads to the inference, in the circumstances of the particular case, that the subject matter of insurance is not an ordinary risk, but is exceptionally liable to be affected by the peril insured against, and (*ii*) facts affecting the moral hazard, *i e*, any fact is material which leads to the inference that the particular proposer is a person, or one of a class of persons, whose proposal for insurance ought to be subjected to special consideration before it can be decided whether it should be accepted at all or accepted at the normal rate [4] Other types of material fact, such as, (*iii*) facts affecting subrogation rights, (*iv*) facts affecting title to the property, (*v*) facts referred to in proposal form including in the case of life insurance contract such as (*a*) health of the insured, (*b*) past illness and medical attendance, (*c*) temperate habits (*d*) residence and occupation (*e*) age, (*vi*) facts of previous refusals, (*vii*) existence of other insurances, (*viii*) overinsurance and the like may come under any of the two main types mentioned above

(*a*) for facts affecting right of subrogation,[5]

(*b*) for facts affecting title to the property,[6]

(*c*) facts referred to in proposal form, these facts are presumed to be material,[7]

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1 *Anderson* v *Fitzgerald* (1853) 4 H L C 484 *Hoare* v *Bremridge* (1872) 8 Ch App 22 (C A)

2 *Horne* v *Poland* (1922) 2 K B 364 *Yorke* v *Yorkshire Insurance Co* (1918) 1 K B 662 For Indian cases on the point see *Imperial Pressing Co* v *British Crown Assurance Corporation Ltd* 21 I C 856 *Shivkumar Radha krishindas* v *North British and Mercantile Insurance Co Ltd* 1936 Sind 222

3 *Seaton* v *Heath* (1899) 1 Q B 782 (C A) see also *Morrison* v *Muspratt and Lindenan* v *Desborough supra*, *Scottish Shire Line Ltd* v *London and Provincial Marine and General Insurance Co Ltd*, (1912) 3 K B 51

4 Halsbury's Laws of England Simonds Edition, Vol 22 p 187

5 See *Tate* v *Hyslop* (1885) 15 Q B D 368

6 See *Warnock* v *Davis* (1881) 104 U S 775 *Dawsons Bank Ltd* v *Vulcan Insurance Co Ltd* 1935 P C I (misdescription of property)

7 See *Dawsons Ltd* v *Bonsor* (1931) S C 411 *Glicksman* v *Lancashire and General* (1925) 2 K B 593 at p 608 *per* Scrutton L J (1927) A C 139 at p 144 *per* Lord Dunedin *Light of Asia Insurance Co Ltd* v *Kavaleya Debi* 40 C W N 1016 1936 Cal 437 (answers regarding family history) *Allkans and Stuttgarter Life Insurance Bank Ltd* v *Hemanta Kumar* 42 C W N 854 1938 Cal 641 *Bharat Insurance Co Ltd* v *Subal Chandra* 48 C W N 263 *Western India Life Insurance Co* v *Asima Sarkar* 46 C W N 759 1942 Cal 412, *Manufacturers Life Insurance Co Ltd* v *Haridasi Devi* 42 C W N 823 1939 Cal 8 (answers as to medical questions) *Muthappa Chettiar* v *Veeraswamy Insurance Co Ltd* I L R (1944) Mad 842 1944 Mad 281 *East and West Life Insurance Co Ltd* v *Kotla Venkiah* (1944) 2 M L J 37 1944 Mad 559 (wrong answers in application for reinstatement of lapsed policy) *Sivananda Setty* v *Premier Life and General Insurance Co Ltd* I I R (1937) Mys 304 1938 Mys 53 (misstatement in motor insurance proposal) *Balkrishna Khilwal* v *New India Insurance Co Ltd* 1939 Pat 402 *supra*

(d) facts of previous refusal by other insurers,[1]

(e) existence of other insurance,[2]

(f) fact of over- nsurance [3]

(C) Inquiries by insurer, principle of construction —The Privy Council in *Condogianis v Guardian Assurance Co* [4] has enunciated the principle thus "In a contract of insurance it is a weighty fact that the questions are framed by the insurer, and that if an answer is obtained to such a question which is upon a fair construction a true answer it is not open to the insuring company to maintain that the question was put in a sense different from or more compre hensive than the proponent's answer covered Where an ambiguity exists, the contract must stand if an answer has been made to the question on a fair and reasonable construction of that question Otherwise the ambiguity would be a trap against which the insured would be protected by Courts of law

With regard to the assured's past illness and medical attendance the question "What medical men have you consulted" has been construed not to extend to cons ltations during early childhood [5] Similarly, the question "How long since you had been attended by a doctor" has been construed not to include attendan e for mere minor ailments [6]

With regard to health of the assured, a warranty of good health can never mean that a man has not in him the seeds of some disorder We are all born with the seeds of mortality in us "[7] Statements by a proposer as to his health are asked for and given on the basis of his belief because the ordinary man cannot be expected to know what is happening to his internal organs or what specific symptoms may indicate Bad faith can be imputed to the insured only when he fails t> disclose a disord r of which he was aware [8] If an experi enced doctor cannot without special tests discover the existence of a disease, such as hepatitis it is not reasonable to expect the insured, an ignorant layman to disclose that disease, even assuming that he suffered from the same It is worthy of mention that the obligation to disclose does not extend to matters not within his kn wledge [9]

(statements in the proposal form or declar ation form forming the basis of the con tract) *Ben Nevis Distn v New India Assurance Co Ltd* 1959 Pat 540 (drawal of a propo- sal by an assured from another company not material) *All India Insurance Co Ltd v S P Maheshwari* 1960 Mad 484 (mis representation about drinking habit and non disclosure of venereal disease) *Lakhmi Insurance Co Ltd v Bibi Padmawati* 63 Punj L R 177 1961 Punj 253 (sickness ailment or injury in application do not mean temporary ill nes) *New India Assurance Co v Selochana* 1962 A P 65 (drinking habit) *Life Insurance Corpn of India v Mst hoolal* 811 (deliberate concealment of fact that the proposer had been treated by doctor f w months before was taken for serious illness)

1 *See Locker and Woolf v Western Australian Insurance* (1936) 1 K B 408 (fire insurance) but see *Essex v National Employers Mutual* (1937) 2 All E R 193 *Glasgow Assurance v Symondson* (1911) 104 L T 253 (not material in marine insurance)

2. *See Lambe Assurance v Manuel* (1879) 11 Ch D 363 (life insurance) but see *Simpson S S Co v Premier Underwriting Association* (1905) 92 L T (not material in other insurances as it tends to lessen the liability on account of principle of contribution) *Donaldson v Manchester Insurance* (1836) 11 Sh (Ct of Sess) 601

3 *See Haase v Evans* (1934) 48 Ll L R 131 *Heff v De Rongemont* (1929) 34 Com Cas 291 *Lowndes v Pender* (1874) L R 9 Q B 531 *Thames and Mersey Marine v Gunford* (1911) A C 529 (in case of valid policies)

4 (1921) 2 A C 125 at p 130 1921 P C 195

5 *Joel v Law Union* (1908) 2 K B 863 at p 884

6 *Connecticut Mutual v Moore* (1881) 6 App Cas 644 (P C)

7 *Wilkis v Poole* (1780) 2 Park (8th Ed) 935

8 *Lakshmi Insurance Co Ltd v Bibi Padmawati* 1961 Punj 253 *supra* *New India Assurance Co Ltd v T S Raghawaddi* 1961 Andh Pra 295 *supra* *See also* Note 8 (II) *supra*

10 Fraudulent suppression of material facts—Policy is vitiated — Whether a person *i e*, the assured, is guilty of a fraudulent suppression of material facts has to be judged by the standard laid down in section 17 of the Contract Act, *i e*, whether there was a suggestion as a fact *suggestio falsi* of that which was not true by the assured who did not believe it to be true or whether there was an active concealment of a fact *suppressio veri* by the assured having knowledge or belief of the fact Where falsification or concealment has an important bearing in obtaining the insurer s consent, the assured could not take advantage of the explanation to section 19 of the said Act (Contract Act), the principle underlying the said explanation being that a false representation whether fraudulent or innocent, is irrelevant if it has not induced the party to whom it is made to act upon it by entering into a contract [1]

Illustrations

(*i*) *A* had been treated, a few months before he submitted a proposal for the insurance of his life with *B* company by a reputed physician for ailments, such as, anaemia, shortness of breath and asthma *A* did not disclose in his answers to the questions that he suffered from these ailments and he also made a statement that he had not been treated by any doctor for any such serious ailment *Held A* was guilty of a fraudulent suppression of material facts and the policy issued to him was vitiated [2]

(*ii*) *A* was a heavy drinker and afflicted with syphilis In effecting an insurance on his own life with *B* company he stated in answering the specific question concerning them in the personal statement that he suffered from no venereal disease and used to take alcohol occasionally *Held*, there was deliberate non-disclosure by *A* of syphilis and deliberate misrepresentation of his drinking habit and *B* was justified in repudiating its liability upon the policy [3]

(*iii*) *A* effected an insurance on his own life with *E* company, the latter having accepted his proposal with a load of five years *A* effected another insurance on his own life with *B* company where he stated in answer to the question "Whether his life had ever been insured in any other company and to give particulars", that he had done so with *E* company at ordinary rates without any extra premium being charged or lien or condition imposed *Held* there was fraudulent misrepresentation or suppression of material facts [4]

(*iv*) *W* and *V* were partners and carrying on a business at *N V* was suffering from defective gait and fatness of heart An insurance proposal on joint life plan by partners *W* and *V* on their lives was made with *B* company wherein *V* stated in the negative in answering the questions, such as, 'Have you suffered within the last five years from any serious illness, disease or accident', "Have you had any illness within the last five years" and in the

1 Muthoolal v *Life Insurance Corporation of India* 1962 S C 814
2 *Ibid*
3 *All India General Insurance Co Ltd* v *S P Maheshwari* 1960 Mad 484
4 *Seethamma* v *Bombay Life Assurance Co* 1954 Mys 134 relying on *Gordan* v *Street* (1899) 2 Q B 641 *see* also *Western India Life Insurance Co* v *Asima Sarkar*, 46 C W N 759

affirmative in answering the question, such as, "What have been your usual states of health" *Held*, there was wilful suppression of true facts and on death of *V* the other partner *W* could not recover on the policy [1]

(*v*) *A* had two brothers and four sisters While effecting an insurance with *L* company he stated in the proposal form in answer to the question of total number of brothers and sisters that he had no brother and he had two sisters who were alive He concealed the deaths of his brothers and two sisters *Held* that the answers were untrue and the company was not liable under the policy [2]

11 Agent of the insurer filling in the proposal form—Effect of — A person who affixes his signature to a proposal which contains a statement which is not true, cannot ordinarily escape from the consequences arising therefrom by pleading that he chose to sign the proposal containing such statement without either reading or understanding it Apart from any question of imputed knowledge, the insured by signing that proposal adopts those answers and makes them his own and that would clearly be so whether the insured signed the proposal without reading or understanding it it being irrelevant to consider how the inaccuracy arose if he has contracted that his written answers shall be accurate [3]

In filling up the proposal form the agent is to be regarded as a mere amanuensis of the proposer and the knowledge of the true facts of the agent could not be imputed to the insurer [4] But in *Bowden v Landon, Edinburgh and Glasgow Assurance* [5] the Court of Appeal held that the knowledge of the agent was the knowledge of the insurer and hence insurer had no defence to a claim by the assured that the answers were false *Bowden's* case has not been followed in other countries [6] Even misappropriation of premium paid to the agent of the insurer would not make the insurer liable under the policy [7] But two instances can be cited where the policy cannot be avoided on the ground of untrue statements, namely (*i*) when it is the agent who signs the proposal [8] and (*ii*) where the agent fills in answers in the proposal falsely after the proposer has signed it and without his knowledge [9]

12 Statements in proposal and declaration forms recorded in English, the proposer not knowing English—Effect of — *In Benarain*

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1 *V G Aolbatkar v Western India Life Insurance Co Ltd* 1954 Nag 325 *see* also *Glackman v Lancashire and General* (1927) A C 139 and *Exer v National Employers Mutual* (1937) 9 All E R 193 (in case of fire insurance) *see* also *Guardian Assurance Co Ltd v Ruttomji Co* 162 I C 443 regarding statements in proposal form of joint policy of husband and wife see *Maung Myat Maung v New India Assurance Co Ltd* 1937 Rang 252

2 *Light of Asia Insurance Co Ltd v Karotaya Debi* 40 C W N 1016 1936 Cal 437 (the question relates to family history of the assured)

3 *Srinivasa Setty v Premier Life and General Insurance Co Ltd* I L R (1957) Mys 501 1958 Mys 53 *see Briggar v Rock Life Assurance Co* (1902) 1 K B 516

4 *Newsh ime Bros v Road Transport and General Insurance Co* (1929) 2 K B 356 followed in *Dunn v Ocean Accident and Guarantee Corporation* (1933) 50 T L R 32

5 (1892) 2 Q B 534

6 *New York Life v Fletcher* 117 U S 519, *Taylor v Yorkshire Insurance* (1914) 2 Ir R 1 *Salaha v Continental Insurance* (1948) 2 D L R 163 *see* also *Lakshmi Sankar v Gresham Life Assurance Society Ltd* 140 I C 575 *Vulcan Insurance Co Ltd v Dawsons Bank Ltd* 1943 Rang 265 1943 *Dawsons Bank Ltd* 11 Rang 166 affirmed as *Dawsons Bank Ltd v Vulcan Insurance Co Ltd* in 13 Rang 63 39 C W N 270 1935 P C 1

7 *Universal Fire and General Insurance Co Ltd v Sheep Skin Hats* 12 Rang 312 1934 Rang 261

8 *Pearl Life v Johnson* (1909) 2 K B 258

9 *Keeling v Pearl Life* (1915) 129 L T 573.

Debi v New India Assurance Co Ltd,[1] the principle of law has been laid down thus "It is a well-established rule of law that in the case of a person who is illiterate or who is not in a position to read the contents of a document, the contract cannot be imposed upon him simply because he has endorsed his signature thereon unless further it is proved that he did that after understanding the contents of the same In other words, the rule of law is that pen must go with the mind and unless both the elements are present, it cannot be said that the document is his" In the said case the statements in the proposal and declaration forms were recorded in English by the assured who did not know English But his signature was accompanied with a specific statement in Hindi *"Samaj kar sahi kiya"* This endorsement *'Samaj kar sahi kiya"* was held to prove that those particular portions of the forms were written in the pen of the assured but not that they had been written after he had fully understood their contents which were admittedly all written in English In the case of such a person, in order to bind him with the knowledge of what is stated in the document like these, it is necessary that the party on whom lies the initial onus to prove that fact must give independent evidence to support the conclusion that the same had been signed by him after he had fully understood their import [2]

13 Policy when can be avoided, burden of proof —By this section, the nice distinction created by the doctrine of warranty under the English Common Law has been eliminated The effect of this section is that after the expiry of the two years in either of the cases contemplated therein, the insurers are prevented from relying upon the usual term that the truth of the statements made in the proposal form and answers in the declaration, form the basis of the contract Under the section, the policy cannot be avoided on the ground of misstatements or untrue answers unless the insurers are able to establish (1) that the statement was inaccurate or false, (2) that such statement was on a material matter or that the statement suppressed facts which it was material to disclose, (3) that the statement was fraudulently made by the policy-holder, and (4) that the policy-holder knew at the time of making the statement that it was false to his knowledge or that facts which it was material to disclose had been suppressed This provision places the burden of proof on the insurer to establish the above circumstances and unless the insurer is able to do so, there is no question of the policy being avoided on the ground of misstatement of facts The courts will not be satisfied with proof which falls short of showing that intentional misrepresentation was made with the knowledge of perpetrating fraud The *onus probandi*, in all such cases, rests heavily on the party alleging fraud The insurer cannot avoid the consequences of the insurance contract by simply showing inaccuracy or falsity of the statement made in the proposal for insurance, or in any report of the medical officer or in any other document leading to the issue of policy [3]

In a burglary policy, a defence of concealment of material facts is also available to the insurer, which, if established will avoid the policy In order to establish its defence of concealment, the insurer must prove (1) that the

1 (1959) Pat 540 at pp 546-547

2 *Pulla Ammal v Oriental Government Security Life Assurance Co Ltd* I L R (1955) Mad 285 1954 Mad 636 *Indian Equitable Insurance Co Ltd v Onkarappa* 1934 Mad 674 152 I C 654

3 *Lakshmi Insurance Co Ltd v Bibi Fatimunnisa* I I R (1961) Punj 353 1961 Punj 253 *see* also *New India Assurance Co v Salochana* 1962 Assam 65 (where burden held not discharged by the insurer) *Basanti Debi v New India Assurance Co Ltd* 1959 Pat 540 (held burden not discharged) *Balkrishna v New India Assurance Co* 1953 Pat 107 (held burden discharged) *Venu India Assurance Co Ltd v T S Reghu vadu* 1961 Andh Pra 295 (held burden not discharged)

facts alleged to have been concealed by the assured were true, (2) that they were material facts, and (3) that they were within the special knowledge of the assured Burden of proving these three facts is on the insurer who sets up this defence [1]

In a contract of fire insurance which essentially is a contract of indemnity the plaintiff has to prove the loss actually suffered by him as a result of fire The loss occasioned by theft cannot be attributed to a fire which only provides the opportunity for intervention as an entirely independent cause of damage [2] Fraud may be inferred from gross negligence [3], or from furbearing to use reasonable exertion and means at hand to avert the development of fire [4] Regarding fraud of one assured only, see *General Accident, Fire and Life* v *Midland Bank* [5]

"As a general principle, the onus on the insurers to prove that a condition has been broken, not on the assured to prove compliance on his part with each and every stipulation' The onus cannot be altered by a pleading which purports to put the assured to the proof of compliance with what has been required of him by a condition But it is open to the parties to alter the burden by making an express stipulation that the onus of proof shall be on the assured and in that case very clear words are necessary to achieve such a result [6]

Where, according to the terms of the life insurance policy, all moneys that had been paid in consequence of policy would belong to the insurance company if the policy was vitiated by reason of a fraudulent suppresion of material facts by the insured and the contract is bad on the ground of fraud the party who has been guilty of fraud or a person who claims under him cannot ask for a refund of the money paid It is well established principle that courts will not entertain an action for money had and received where, in order to succeed, the plaintiff has to prove his own fraud Further, in cases in which there is a stipulation that by reason of a breach of warranty by one of the parties to the contract the party shall be discharged from the performance of his part of the contract, neither section 65 nor section 64 of the Contract Act has any application [7]

14 Calling for proof of age Proviso —In a contract of life insurance the age of the assured is certainly important Ordinarily if he misstat s his age a reasonable insurer makes a corresponding adjustment of the sum assured instead of avoiding the policy but if he does neither and accepts the premiums even after knowing his true age the insurer is liable on the policy to the full extent [8] Proviso to this section provides what a reasonable insurer does, that is he can call for the proof of age of the assured and adjust the

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1 *Rahimi Nandon Goswami* v *Ocean Accident and Guarantee Corporation Ltd* 1960 Cal 696 (in the instant case it has been held that the fact of burglary having been committed five years back in the ground floor of the same premises had no bearing on the risk undertaken by the insurer by insuring goods in the first floor of the same premises and that the fact of the previous burglary was not a material fact) *see also Chandmull Jain* v *General Assurance Society Ltd* 63 C W N 367 1959 Cal 558; *Ghasi Alal Hukam Chand* v *Great American Insurance Co Ltd* 1960 Punj 523; *see also* 1 F *Dass* v *Union of India* 1950 Madh Pra 297 *Regina Furs* v *Bostom* (1958) 2 Lloyd s Repott 425

3 *Goodman* v *Harvey* (1836) 4 A and E 870

4 *Devlin* v *Queen Insurance* (1882) 46 U C Q B 611 *Gone* v *Farmer s Mutual Fire Insurance Co* (1868) 2 Am Ref 168 48 N H 41

5 (1940) 2 K B 388

6 Halsbury s Laws of England Vol 22 P 227 and see *Bond Air Services Ltd* v *Hutchinson Generals* (1955) 2 All E R 476; *Lacy* v *Assicurazioni Generali* (1940) All E R 427

7 *Mithoolal* v *Life Insurance Corporation of India* 1962 S C 814

8 *Hemmings* v *Scottish Life* (1905) 1 Ch 365

premium but he cannot avoid the policy on the ground of misstatement of age When once the age is admitted the insurer should be precluded from disputing the correctness of it unless the admission was procured by fraud [1]

Application of Indian law to policies issued in India.

46 The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in India after the commencement of this Act shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto, to receive payment in India of any sum secured thereby and to sue for any relief in respect of the policy in any court of competent jurisdiction in India, and if the suit is brought in India any question of law arising in connection with any such policy shall be determined according to the law in force in India

Provided that nothing in this section shall apply to a policy of marine insurance

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *The holder of a policy of insurance, meaning of*
5 *"Insurance business transacted in India"*
6 *"Receive payment of any sum"*
7 *"Sue for any relief in respect of the policy"*
8 *"In any court of competent jurisdiction", forum of suit*
9 *Any question of law arising shall be determined according to the law in force in India*

1 Legislative changes —(*a*) The word "India" occurring in the section was substituted for the words "the States" by Act LXII of 1956

(*b*) The proviso to the section was added by Act VII of 1944

2 Object and scope —A good deal of business in contracts of insurance is international in character and a conflict of law arises when a policy of insurance has to be dealt with in a country other than the country by the law of which the original contract is governed The rule of *lex loci contractus* is that the law of the country where the contract is made governs the contract and the rule of *lex loci solutionis*, is that the performance of the contract is governed by the law and usage of the place where the contract is performed, i e the law of the place where the moneys are payable. The object of this section is to overcome the difficulty that may arise in according the aforesaid two principles to policies of insurance other than marine ones.

This section confers certain rights on the holders of policies issued by an insurer in respect of all kinds of insurance business transacted in India after the commencement of the Insurance Act The rights conferred are—

(*i*) right to receive payment in India of any sum secured by the policy i e, he is to receive policy money thereby in India;

1 *Monekhal Kalidas Shahh Yorkshire Insurance Co Ltd* 41 Bom L R 353 [1939 Bom 161 *see* also *Allianz und Stuttgarter Insurance Bank Ltd v Fatehchand* AIR 1957 Cal 62

(ii) right to sue for any relief in respect of the policy in any Court of competent jurisdiction in India *i e* he has the right to bring any suit in respect of any relief concerning his policy in India in a Court competent to grant the relief, and

(iii) right to have any question of law arising in connection with any such policy in a suit brought in India to be determined according to the law in force in India, *i e*, in a suit brought by him in India he has the right to claim that his claim in the suit should be determined according to Indian law in force and not in accordance with any foreign law

These rights have been conferred on the policy-holder irrespective of the fact that there is anything to the contrary contained either in the policy or in any agreement relating thereto In the absence of this provision any policy providing a clause that that contract is to be governed by the law of country 'X' would have been in effect conclusive that it is to be governed by the law of that country [1] In *Mount Albert B C* 's case (*supra*) it has been said that the consideration of the terms of the contract, the situation of the parties, and law of which country is to be applied is "to be ascertained in each case on a generally on all the surrounding facts"

The provision of this section sets at rest all controversies regarding the law to be applicable to policies other than marine policies that the law in India for the time being in force will govern such policies when issued in respect of insurance business transacted in India

3 **Applicability**—Proviso to this section has excluded a policy of marine insurance from coming within the operation of this section, that is to say, the provisions of this section apply to policies of all classes of insurance business except a policy of marine insurance Thus policies of life insurance, fire insurance and miscellaneous insurance issued by any insurer while transacting such business in India after the commencement of this Act *i e*, after 1st July 1939 This section shall also apply to the Life Insurance Corporation of India

4 **"The holder of a policy of insurance," meaning of**—*See* Note 20 under section 2 *supra*

5 **'Insurance business transacted in India**—The expression "insurance business transacted in India, which is the essential prerequisite for the application of this section as has been observed in the foregoing Note 3, has been defined thus—

"For the purposes of the Act the business of an insurer shall be deemed to be transacted in India or the States according as the premiums in respect of those transactions are ordinarily paid in India or the States as the case may be

Provided that if any question arises whether any premiums are ordinarily paid inside or outside States of India the Controller shall decide the question and his decision shall be final" [2]

Thus, for the purpose of determining whether an insurance business has been transacted in India one has to see whether the premiums payable in

1 *See Mount Albert B C v Australasian Temperance Association* (1938) A C 224 (P C) *Peck v Manufacturers Life* (1938) 2 Lloyd's Rep 93 ; *Spurrier v La Cloche* (1902) A C 446 (P C)

2. Rule 29 Insurance Rules 1939

respect of the policy are ordinarily paid in India and not whether the contract of insurance is made in India If the premiums are paid in India the transaction of insurance business must be deemed to have been transacted in India irrespective of the fact that the contract of insurance is made outside India In such circumstances a foreign insurer cannot take the plea that the claim on the policy should be governed by the laws of his country or a suit on that policy must be instituted in a Court of his origin But such business must not relate to marine insurance

6 **"Receive payment of any sum"** —This section in mandatory language confers upon the policy holder, in respect of all classes of insurance business transacted in India except the business of marine insurance, the right to receive payment in India of any sum secured by the policy Even where the policy provides that payment should be received in a country outside India such provisions in the policy will not stand in the way of the policy holder to claim or enforce his right under this section and the insurer, in such circumstances, shall be obliged to pay the policy money in India

In England, policy moneys under policies governed by English law are, sometimes, expressed to be payable in a foreign currency In such a case the English Court awards the sum due in sterling and not in any other currency and the rate of exchange of the day when payment was due is made applicable to the particular currency to which the contract referred [1]

The policy holder in India shall receive the policy moneys in Indian coins irrespective of whether the contract was to pay in a foreign currency and it is not necessary to convert the foreign currency in Indian coins at any prevailing rate at any time, whether at the time when the policy money became due and payable or at the time when the judgment in respect of the policy, when a suit is brought, was pronounced

7 **"Sue for any relief in respect of the policy'** —The section also confers right on the policy-holder in respect of non-marine policy effected in course of insurance business transacted in India to sue for any relief in respect of such policy In other words, the section confers on the policy holder the right of suit in respect of the policy irrespective of any clause to the contrary being contained in the policy in question Thus, if there be a term in the policy that any suit under the policy will be tried by Court 'X' outside India and not by any Court in India, the term will not prevent the policy-holder from bringing a suit under the policy in India

The word "relief" means the remedy which the courts of justice grant to suitors When a person's legal rights are infringed by commission of civil injuries he comes to civil courts for redress as there is no wrong without a remedy The remedies which a civil court grants may be classified into two kinds, namely, (i) specific relief, *i e*, by which the suitor obtains the very thing to which he is entitled, and (ii) compensatory relief, *i e*, by which he obtains not that very thing, but compensation or damages for the loss of it The relief may also be preventive one, *i e*, by way of injunction

A right to 'sue for any relief' includes 'a mere right to sue,' *i e*, unconnected with the ownership of any property, that is to say, unconnected with a

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1 *Anderson* v *Equitable Association* (1926) 134 L T 557 (life policy) *see* also *Re Chesterman's Trust* (1923) 2 Ch 466 *East India Trading Co, Inc* v *Carmel Exporters and Importers Ltd* (1952) 1 All E R 1053 *Re United Railways of the Havana and Regla Warehouses* (1960) Ch 52.

right in existence, *e g*, damages for breach of contract or tort which is un connected with the ownership of any existing property because the futur possible award of damages is not existing property

8 **"In any court of competent jurisdiction"—Forum of suit**—The policy-holder has been given the right to sue for any relief in any court of competent jurisdiction in India, *i e*, his suit must be brought in a court competent to try it The competency of the court to try a suit is its jurisdiction which consists in taking cognizance of a case involving the determination of some jural relation, in ascertaining the essential points of it and in pronouncing upon them [1] But there can be no justification in saying that a court has jurisdiction in any dispute' only when it is authorised to decide it finally Jurisdiction in any dispute' only when it is authorised to decide or as to amount or as to the character of the questions to be determined In the last case, the court does have jurisdiction even though it is only to decide a particular question [2]

A court may have jurisdiction with reference to the subject matter of the dispute or it may have jurisdiction with reference to the nature of the claim made In the latter the jurisdiction may be local or territorial personal and pecuniary In both the cases the jurisdiction depends upon the allegations in the plaint and not upon the merits of the claim nor upon the nature of defence Again consent can neither give nor oust jurisdiction of a court although the parties 'may constitute the Judge, their arbiter, and be bound by his decision on the merits when these are submitted to him' [3]

When an insurer rejects a claim the claimant has a right of suit against him [4] Even the guardian of a minor, who effected an insurance against fire in respect of the minor [5] property, is entitled to sue on the contract on behalf of the minor's property, is entitled to sue on the contract on behalf

The claim to insurance money falls within the category of personal actions of common law as distinguished from real actions which are actions against the rest of property Real actions are sometimes called local because those actions are brought in the forum *rei sitae*, that is, the place where property is situate Personal actions are also known as transitory because of their occurring anywhere such as, actions for tort or suits on contracts So far as the personal actions are concerned the plaintiff has been given an option by the Code of Civil Procedure, of suing either (*i*) in the forum dependant that is where the dependant resides, carries on business or personally works for gain, or (*ii*) where the cause of action wholly or in part arises [6]

Where a person 'carries on business' within the local limits of the jurisdiction of a court that will be sufficient for that court to get jurisdiction over him [7] The question of carrying on business being one of fact it is better to decide it by looking at things which are done rather than at the words which are used' The Court ought to arrive at a finding on the basis of the evidence adduced as to things which were done [8]

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1 *Amrao v Balkrishna* 11 Bom 488 at p 490 *per* West J
2 *Dilmia Dadri Cement Co Ltd v Commr of I T* 1955 Pepsu 3
3 *Legard v Sneath* (1912) 2 K B 362
4 *Reoman v Bull* 13 I A 134 ; 9 All 191 at p 203
5 *Great American Insurance Co Ltd v Madan Lal* 1935 Bom 352
6 S 20 C P Code Act V of 1908
7 *Habeb Shah v Pandakhan* 31 C W N 171 ; 1927 P C 88
8 *Ruttonjee Jeebardas v Indo-China Steam Navigation Co Ltd* 99 C L J 95

The expression "carries on business" has also been held to relate to business in which a man may contract debts and is liable to be sued by persons having business transactions with him [1] According to section 20, Explanation II of the C P Code, an incorporated company can be sued at its principal place of business or if cause of action arises at some other place and it has got a subordinate place of business at that place also The mere fact that the principal place of business has been shifted to another place will not transfer the right of the plaintiff to bring a suit at the latter place [2] But an insurer carrying on business in Bombay employs an agent in Madras who acts merely as a post office, forwarding proposals and sending moneys, he cannot be said to be carrying on business in Madras [3] So also where a policy was effected through a local agent of an insurer in Madras and was accepted by the insurer in Calcutta, the local agent at Madras not being authorised to accept proposals, it was held that the policy was effected in Calcutta and not in Madras [4] Similarly, where *A* insured his life for the benefit of his wife with an insurer in Calcutta and the business of the said insurer was subsequently taken over by another insurer in Madras, on a suit being filed to recover the insurance amount, it was held that the contract having been completed in Calcutta, the proper person to sue was the Official Trustee of Bengal [5] Again if no part of the cause of action accrues at the place of the branch office the mere fact of the Corporation having a branch office at the place will not give the court jurisdiction [6] In English law, a company can carry on business in several places Thus where a company has its head office in London where the directors meet and control the company's affairs, but has its factory at *B* within the district of Cardiff, it must be held that the company resides in London but carries on business both in London and at *B* [7] Again, where a policy of insurance was effected with an insurance company the head office of which was at Delhi the proposal for the policy was made at Delhi and was accepted at Delhi and the money was also payable to the nominee at Delhi On the death of the assured at a place in Hyderabad State, the nominee brought a suit at Nagpur where the company had a branch office, it was held that the court at Nagpur had no jurisdiction to entertain the suit [8]

The expression 'cause of action' may be defined as being the fact or facts which establish or give rise to a right of action or the existence of which entitles a party to seek redress in a court of law The facts which comprise the cause of action are those which must, if traversed, be proved by the plaintiff to enable him to obtain a judgment in his favour [9] In other words, cause of action refers entirely to the grounds set forth in the plaint as the cause of action, i e, to the 'media' upon which the plaintiff asks the court to arrive at a conclusion in his favour It does not comprise every piece of evidence which is necessary to be proved to entitle the plaintiff to a decree [10] The test in determining whether an allegation forms part of cause of action is whether

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1 *Goswami v Govardhanlalji* 16 Bom 274 21 I A 13 (P C), *Shiu Bhagwan v Onkarmal* 1952 Bom 365

2 *Home Insurance Co Ltd v Jagjit Sugar Mills Co Ltd* 1952 Punj 142

3 *John v Sambamurthy Iyer* 1929 Mad 347

4 *National Insurance Co Ltd v Seethamval* 1933 Mad 761

5 *Lakshmi Ammal v Sun Life Assurance Co* 57 Mad 516

6 *Bholanath v Empire of India Life Assurance Co Ltd*, 1948 Lah 56

7 *Davis v Green Ltd* (1956) 3 All E R 389

8 *Bharat Insurance Co v Wasudeo Ramchandra* 1956 Nag 203; *see* also *Nedungadi Bank Ltd v Central Bank of India Ltd* I L R (1960) Ker 1444 1961 Ker 50

9 *Muzaffar Ali Khan v L Jawanda Mal* 1955 Punj 93 *see* also *Smt Chandrawati v L Sukraj Narain* 1955 All 387

10 *Gupta L v V B Sarvate* 1956 Nag 204 *Harilal Hars Prasad v State of Saurashtra* 1956 Sau 75

the plaintiff has to prove the same in order to support his right to judgment of the court [1] In the case of insurance money due on a policy payable on death the claimant has to prove the death of the assured, hence place of death of the assured is the place where part of the cause of action arises so as to give jurisdiction to the court of that place even if there was a clause in the policy that the amount would be payable at the head office of the insurer [2] In case of fire insurance opinion differs as to whether the cause of action arises at a place where the loss or damage to the property insured occurs or at a place where money due under the policy is payable The former view is held by the Rangoon High Court in *Jupiter General Insurance Co Ltd v Abdul A iz* [3] But the Nagpur High Court in *British Equitable Assurance Co v Rajaram* [4] held the latter view [5] Similarly, claim on a policy of burglary insurance can be made at a place where the burglary was committed as the burglary is a part of the cause of action entitling the plaintiff to sue [6] Again, where an insurance company's agent at *E* was only authorised to canvass for proposals for insurance and had no authority to accept the proposal, all he had to do being to see that the proposal form was correctly filled up and to send it to the head office at *C* for disposal there and the policy money was payable at *C* it was held that until the proposal reached the head office there was no offer, it was made at *C*, it was accepted at *C* and the cause of action on the policy arose entirely at *C* and it could not be said that the cause of action arose at *E* from the circumstances that when the half yearly premium became payable the company, instead of sending its demand to the assured directed its local agent to collect the money from him [7] So also where under the contract of indemnity made at *B* by an insurance company having its office at *B* the amount to be under the policy is payable at *B*, a suit on the policy is to be filed at *B* The fact that the company has a sub-agency at *K* does not give the court at *K* jurisdiction to entertain the suit when the agent had no power to accept any offer and he only got commission on the work canvassed by him and no office allowance and even where premia were offered through him, they were accepted by the company at *B* [8]

9 Any question of law arising shall be determined according to the law in force in India —The section further provides that when a suit on the policy of insurance is brought in India any question of law arising in connection with the policy in suit shall be determined according to the law in force in India In all suits brought before the court it had to determine generally (i) question of fact (ii) question of law and (iii) mixed questions of law and fact The trial court has jurisdiction to determine all these questions when they arise before it But when a foreign insurer raises questions on the avoidance or voidability of the policy or on the right of the claimant to be entitled to the policy money or raises questions of the validity of nomination

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1 *Fuzli Ajj Thanmull v Union of India* 1960 Cal 458

2 *See Siva Kumar Radhakishan Das v Bombay Life Assurance Co Ltd* 1934 Sind 76 *Bengal Provident and Insurance Co Ltd v Rohini Kumar Chaudhuri* 22 C W N 517 *Jitendra Thritha v National Insurance Co Ltd* 1918 Mad 635 *Punjab Mutual Hindu Family Relief Fund v Sardarmal* 1918 Lah 320 *Lekh of Asia Insurance Co v Brindabani Dass v Co operative Assurance Co Ltd* I L R (1944) 1 Cal 101 211 I C 450 *Gaurdian Assurance Co v Shiva Marg I Singh* 1937 All 208

3 I Rang 231 1924 Rang 2

4 1928 Nag 305

5 *See also Read v Brown* (1889) 22 Q B D 128 *Calland v Champion* (1797) 7 T R 205 *Guardian Assurance Co v Shiva Marg Singh* and the cases cited *supra*

6 *Guardian Assurance Co v Shiva Marg Singh* I L R (1937) All 234 1937 All 208

7 *Bengal Insurance and Real Property Co Ltd v Hiranmal* I L R (1917) Mad 990 1917 Mad 571

8 *Hori v Industrial and Prudential Assurance Co*, 1937 Sind 17

of or of assignability or transferability of the policy all such questions are questions of law and such questions are to be determined according to the law in force in India and not in accordance with law as prevailing in the country of the origin of the insurer It may be remembered that questions of law and fact are sometimes difficult to disentangle [1]

Payment of money into court

47 (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount, the insurer may apply to pay the amount into the court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise

(2) A receipt granted by the court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount

(3) An application for permission to make a payment into court under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely,—

(*a*) the name of the insured person and his address ,

(*b*) if the insured person is deceased, the date and place of his death ,

(*c*) the nature of the policy and the amount secured by it ,

(*d*) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received ,

(*e*) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount , and

(*f*) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into court

(4) An application under this section shall not be entertained by the court if the application is made before the expiry of six months from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be

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1 *Atul Chandra Lahury* v *Sonatan Dass* 65 C. W. N. 626, *see* also *Union of India* v *Bharat Fire and General Insurance Co Ltd*, I L R (1961) 1 Punj. 271 1961 '57

(5) If it appears to the court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into court and shall invest the amount in Government securities pending its disposal

(6) The insurer shall transmit to the court every notice of claim received after the making of the application under sub-section (3), and any payment required by the court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the court

(7) The court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given to every other ascertained claimant

(8) The court shall decide all questions relating to the disposal of claims to the amount paid into court

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *"Pay the amount into the Court", sub-section (1)*
(A) *Conflicting claims*
(B) *Insufficiency of proof of title*
(C) *Any other adequate reason*
(D) *Court where the payment is to be made*
5 *Payment into Court, effect of*
6 *Procedure for making a payment in, sub-section (3)*
7 *When the Court shall not entertain application sub-section (4)*
8 *When the amount to be allowed to be paid into court, Court's duty, sub-section (5)*
9 *Insurer's duty and costs of application and proceedings, sub section (6)*

1 Legislative changes—(*a*) The words "the insurer may" occurring in sub-section (1) have been substituted for the words 'the insurer shall' by Act XIII of 1941

(*b*) The words "before the expiry of nine months from the date of the maturing of the policy or, where the circumstances are such that the insurer cannot be immediately aware of such maturing from the date on which notice of such maturing is given to the insurer" occurring in sub-section (1) between the words 'may and apply" were omitted by Act XLVII of 1950

(*c*) The words 'from the maturing of the policy as the case may be occurring in sub section (4) were substituted for the words 'from the death of the insured or the maturing of the policy by survival' by Act XI of 1939

2 Applicability—Except to the extent provided in the succeeding section 47A where the policy of life insurance does not assure a sum exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus), the provisions of this section are applicable to all policies of

life insurance but they are not applicable to any policies of any other classes of insurance, such as, fire, marine or miscellaneous

3 **Object and scope** —The object of the section is to afford protection to an insurer from paying any claim on a policy of life insurance to any wrong person or from involving in a litigation by filing on interpleader suit in case of conflicting claims or insufficiency of proof of title This section also relieves the insurer, when he pays the money under the policy in such cases to court, of his responsibility under the said policy and be obtains a discharge for the payment of the said amount

The section presents a complete code as to when, under what circumstances, in what manner and in which court an amount due under a life policy can be paid into court Payment of policy money can be paid into court only under three circumstances mentioned in the section, namely, (i) where there is a conflict of claims, (ii) where there is insufficiency of proof of title to the amount due under the policy in question, or (iii) where there is any other adequate reason Permission to make a payment into court has to be obtained by means of a petition supported by an affidavit to be affirmed by the principal officer of the insurer and it has to be filed after the expiry of six months from the date when the policy matures by survival or from the date of notice of the assured's death received by the insurer The petition for permission must set forth the particulars mentioned in clauses (*a*) to (*f*) of sub section (3) The court permits such payment into court when it will appear to it that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer

In English law, under the Life Assurance Companies (Payment into Court) Act, 1896 (59 Vict, c 8) life insurance companies who are not friendly societies, have the option to pay into court, "moneys payable by them under a life policy in respect of which, in the opinion of their Board of Directors, no sufficient discharge can otherwise be obtained "[1] The advantage of payment in under the English Act 'is that the company can thereby get an absolute discharge against all claims present and future and not only, as in the case of interpleader, in respect of an existing contest between rival claimants Thus where difficulty arises from the fact that the person entitled to sue at law cannot be ascertained, or from the fact that the company has had actual or constructive notice of equitable claims from persons who cannot be ascertained, or generally where owing to amateur or bad conveyancing the title is not satisfactory, the Act provides the company with a simple way out of its difficulties "[2] Proviso to section 136 of the Law of Property Act, 1925 (15 Geo 5 c 20) permits any insurer to pay money into court under the provisions of the Trustee Act, 1925 (15 and 16 Geo 5, c 19) which he could not otherwise pay in under the Life Assurance Companies (Payment into Court) Act 1896, except the money payable under a life policy Such payment is permitted on two grounds, namely, (*a*) where an assignment affects the section is disputed by the assignor or any person claiming through him, or (*b*) where the claim is by assignee under the section and there is an opposing or conflicting claim to the policy When neither of the aforesaid two Acts namely, Acts of 1896 and of 1925, comes to the insurer's assistance, he can remedy is in case of conflicting or competing claims, by filing an interpleader suit.[3] The provisions of the Act of 1896 do not apply to Scotland

1 *See* S 4 of the said Act
2 MacGillivray Insurance Law Vol 2 5th Ed p 565
3 *Prudential v Newbury*, 1907 74 Weekly Notes 525
4 S 5 of the Act

4 **"Pay the amount into the court" sub-section (1)**—Sub-section (1) of this section provides the reasons which can actuate an insurer to apply to court for payment of the amount due under any policy of life insurance The reasons for seeking the permission of the court for the purpose are that the insurer must be of opinion that it is not possible for him to obtain a satisfactory discharge for the payment of any amount due under a policy of life insurance which has matured for payment either by survival or by death, by reason of (*a*) conflicting claims to the policy money, or (*b*) insufficiency of proof of title to the amount of the policy in question, or (*c*) that there are adequate reasons for coming to the opinion aforesaid Unless the insurer be not of the opinion that he would not obtain a valid discharge for the money due under a life policy, he has no right to apply to the court to pay the money in

(*A*) *Conflicting claims*—When two or more persons claim adversely against each other or one another a sum of money, such claims are said to be conflicting The rival or conflicting claims must refer to the same debt or the same of money but not necessarily to the same extent So for conflicting claims it is not necessary that all the claimants should claim the whole of the money Moreover, a conflict of claims does not arise in a sum of money to be determinable as unliquidated damages but it may arise in a chose in action [1]

(*B*) *Insufficiency of proof of title*—"The word 'proof' seems properly to mean anything which serves, either immediately or mediately to convince the mind, of the truth or falsehood of a fact or proposition, and the proofs of matters of fact in general are over senses, the testimony of witnesses documents and the like" [2] 'Proof' means the furnishing of statements by witnesses and documents tending to support the truth of the claim Unless specifically required by the policy the statements need not be on oath The statements, however, must give a detailed narrative of facts A mere notice that an accident has happened and that an injury has resulted is not proof' [3] The question of title to a policy of life insurance generally arises when the insurer is required to (*a*) pay a claim (*b*) accept a surrender (*c*) convert a policy to a paid up one, or (*d*) make a loan But the provisions of this section are confined to the examining of title to the policy arising out of a claim which arises either by death or by maturity

In case of a claim by maturity the insurer has to examine the title with reference to any nomination or assignment made in respect of the policy and when there is none it requires the claimant to produce the policy and to sign the forms used by the insurer for such cases But in case of a claim by death apart from nomination or assignment other considerations also arise for scrutiny, such as, to whom the policy belongs by devolution on death or where the insured person died testate or intestate, in case of the former production of probate or Letters of Administration with the copy of the will annexed of a competent court is insisted upon In case of latter production of succession certificate or Letters of Administration of a competent court is also insisted

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1 See *Laing* v *Zedan* (1874) 9 Ch App 736 *Heggart* v *Cutia* (1841) Cr and Ph 197 *Allenborough* v *London and St Katherine's Dock Co* (1878) 3 C P D 450 *Wright* v *Freeman* (1878) 3 C P D 467 *Jenkins* (1890) 24 Q B D 275 *Robinson* v cited in A I R Commentaries on C P Code 6th Ed Vol I P 1137 (foot note)

2 Best on Evidence S 10

3 MacGillivray Insurance Law Vol 2 5th Ed p 830 and also see *Johnston* v *Dominion Insurance* (1900) 17 Ont L R 462 cited therein see also *John* v *Oriental Government Security Life Assurance Co* 1929 Mad 347

upon [1] But no succession certificate is necessary when the policy is under the Married Women's Property Act [2]

Where the proof will be sufficient or where it will be insufficient depends upon the facts and circumstances of each case and no general set of rules can be laid down in this regard But proof that is reasonably satisfactory will be sufficient unless a *bona fide* insurer forms an opinion to the contrary [3]

As regards proof of death, see *Doyle* v *City of Glasgow Assurance* [4]

(*C*) *Any other adequate reason*—What will be "any other adequate reason" from which the insurer comes to the opinion that a satisfactory discharge for the payment of the amount due under the policy is not possible will also depend upon the facts and circumstances of each case and no easy formula can be laid down in this regard too An instance of this can be cited in case of lost policy and the claimant refuses to execute an indemnity stating the circumstances under which the policy was lost and declaring that a diligent search has been made for it without any result [5]

(*D*) *Court where the payment is to be made*—Ordinarily, the amount under this section payable into court has to be paid into the court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy, but if there be no such terms in the policy the amount has to be paid into court having jurisdiction over the subject-matter of the policy on account of the cause of action having arisen in its jurisdiction or over the insurer on account of his residence or carrying on business within the jurisdiction of that court [6] Thus, where the policy was effected at '*A*, the policy money under the terms of the policy is payable at '*B*' and the death occurred at '*C*', the amount payable under this section should be paid into court at '*B* but if there be no stipulation of payment at '*B* the amount may be paid into courts either at '*A*' or at '*C*' Similarly, where the amount under the policy is payable within the ordinary original civil jurisdiction of any High Court an application to pay the amount in has to be made in that High Court but where under the terms of the policy the amount secured therein is payable at a place within the jurisdiction of a District Court such application has to be made in the court of that district [7]

Under the Life Assurance Companies (Payment into Court) Act, 1896, "any life assurance company may pay into the High Court, or where the head office of the company is situated within the jurisdiction of the Chancery Court of the County Palatine of Lancaster either into that court or into the

1 See *Rajamma* v *Rama Krishnayya*, 29 Mad 121 *Oriental Government Security Life Assurance Co Ltd* v *Venkedda Amayya* 35 Mad 162 *Mahadev Pandia* v *Ram Narayan Pandia* 13 M L J 75 *Gresham Life Insurance Society Ltd* v *Collector of Etawah* 1933 Com Cas 1 *Charusila* v *Jyotish Chandra* 33 I C 157 *Dave Jeu* v *Sun Life Assurance Co* 1935 Rang 211 *Vittal Rao* v *R Hanumantha Rao* 50 Mad 412 1927 Mad 359 *Baccharam* v *Adyanath* 13 C W N 966 (F B) *Brajendra* v *Nilakrinath* 33 C W N 1177 *Tulsi Debya* v *Bibhut* 41 C W N 985 1937 Cal 423

2 *See* Note 8 under S 38 and Notes 11 and 12 under S 39 *supra*

3 *Bounstein* v *Accidental Death* (1861) B and S 782 *London Guarantee* v *Fearnley* (1880) 5 App Cas 911

4 (1883) 53 L J Ch 527 *Williams* v *Scottish Widows Fund etc* (1888) 4 T L R 499 *Prudential* v *Edmonds* (1877) 2 App Cas 487 *Thompson* v *Thompson*, (1902) 1 K B 603

5 See *Harrison* v *Alliance Assurance* (1892) 2 K B 184 *see* also *Bustman* v (1833) 3 Sim 635 *Crokatt* v (1886) L R 1 Eq 2 L J Ch 5

6 *See* Note 8 under S

7 *See* Note 21 under S

High Court, any moneys payable by them under a life policy in respect of which, in the opinion of their Board of Directors, no sufficient discharge can otherwise be obtained "[1]

5 Payment into Court, effect of sub-section (2) —Sub-section (2) provides that when a receipt is granted by the court for any payment made in pursuance of sub-section (1) that receipt by the court shall be a satisfactory discharge to the insurer for the payment of such amount Under the English Act of 1895 [2] the receipt or certificate of the proper officer shall be a sufficient discharge to the company for the moneys so paid into court "[2]

In the case of an interpleader suit the court may, at the first hearing declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit or if it thinks that justice or convenience so requires retain all parties until the final disposal of the suit [3]

6 Procedure for making a payment in sub-section (3) —Sub-section (3) prescribes the procedure to be followed in making an application for permission to make a payment into court under this section Such application has to be made in the form of a petition supported by an affidavit affirmed and signed by a principal officer of the insurer and the petition must set forth the particulars mentioned in clauses (*a*) to (*f*) of this sub-section, namely, the names and addresses of the insured person, of each claimant so far known to the insurer and of the insurer, specially the address of the latter where notice of any proceeding relating to disposal of the amount paid into court may be served on him in case of the policy being matured by death, the date and place of death of the insured person, the reasons for the petition, that is, why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount, and the nature of the policy and the amount secured by it

Under the Rules of the Supreme Court (Life Assurance Companies) 1896,[4] when an assurance company desires to make a payment into court under the Act of 1896 it shall cause an affidavit by its secretary or other authorised officer, to be filed, entitled "In the matter of the Policy No effected with *AB* company and in the matter of the Act" and setting forth (*a*) a short description of the policy and according to its terms the persons entitled thereunder, (*b*) a short statement of the notices received claiming an interest in or title to the money assured together with dates of receipts and withdrawals, if any, (*c*) a statement that in the opinion of the Board of Directors, no sufficient discharge can be had otherwise than by payment into court, (*d*) the submission by the company to pay such further sum by way of interest or costs as will be directed by the Court and (*e*) an undertaking by the company to transmit to the paymaster any notice received thereafter, and it shall also state the place where the company may be served with any petition summons, order or notice of any proceeding relating to the money [5]

7 When the Court shall not entertain an application sub-section (4) —Sub-section (4) provides two circumstances under which a Court must not entertain an application of an insurer desiring to pay the money into Court under this section Such circumstances are that if the application

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1 S 3 of the said Act
2 S 4 of the said Act
3 Order XXXV R 4 C P Code
4 R S C Ord 54C
5 R 1 clauses (*a*) to (*f*) of the said Rules

is made before the expiry of six months (*a*) from the maturing of the policy by survival or (*b*) from the date of receipt of notice by the insurer of the death of the insured What this sub-section says is that an insurer's right to apply to the Court to permit him to pay the amount into Court shall not accrue until after the expiry of six months from the date of maturing of the policy when the claim arises by survival or from the date of his receiving notice of the death of the insured when claim arises by death of the insured

Under the English Rules stated above no such restriction has been imposed on the powers of the Court but Rule 3 of the said Rules of 1896 provides that "no payment shall be made into Court under the Act where any action to which the company is a party is pending in relation to the policy or the moneys thereby assured except by leave of the Judge to be obtained by summons in the action" In case of an interpleader suit, proviso to section 88 of the Code of Civil Procedure says that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted

8 **When the amount to be allowed to be paid into Court, Court's duty sub section** (5)—Sub-section (5) imposes two duties on the Court Firstly, the Court shall allow the amount to be paid into court only when it appears to it that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer Secondly, the Court shall invest the amount in Government securities pending the disposal of the insurer's application The sub section is intended to be an effective safeguard against entertaining each and every application of the insurer irrespective of its merits It is not insurer's opinion that a satisfactory discharge can not otherwise be obtained that matters but that it is the satisfaction of the Court in this regard which would be the sole criterion for entertaining an application under this section If the Court is satisfied from the perusal of the application that a satisfactory discharge would otherwise be obtained by the insurer, it must not entertain the application and would refuse to permit the insurer to pay the amount into Court

9 **Insurer s duty after application and costs of the application and proceedings sub sections (6) and (7)**—Sub section (6) provides two things It provides for the insurer's duty after the application under this section has been made The duty lies in his transmitting to the court every notice of claim received after making the application under sub-section (3) Under the English rule aforesaid the company is to transmit forthwith to the paymaster any notice of claim received by it after the affidavit with a letter referring to the title of the affidavit But under this Act the insurer is to transmit such notice to the court and he should do so also by means of a petition which must be accompanied by the notice and such petition need not be accompanied by any affidavit The transmission should not be made by a letter

With regard to the costs of the application under sub section (3) they are to be paid by the insurer But with regard to the costs of the proceedings or otherwise in connection with the disposal of the amount paid in o Court, they shall be in the discretion of the Court Costs in any suit or proceeding generally follows the event but the Court has power to order otherwise, in that case it has to state its reasons in writing Section 35 (1) of the Code of Civil Procedure provides that 'the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have

full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid" Even the Court has power to award interest on costs at any rate not exceeding 6 per cent per annum, and such interest is added to the costs and is recoverable as such [1]

Sub-section (7) also provides that if any claimant applies to the Court to withdraw the amount paid into Court notice to every other ascertained claimant has to be served at the costs of that claimant who desires to withdraw the amount

10 Court's duty sub-sections (7) and (8) —Sub sections (7) and (8) cast certain duties on the Court dealing with an application under sub-section (3) Firstly it shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, secondly, when a claimant applies to withdraw the amount so paid into Court it shall also cause notice to be given to every other ascertained claimant, and thirdly, the Court shall decide all questions relating to the disposal of claims to the amount paid into Court

The expression "ascertained claimant" under sub-section (7) will include all claimants whose names and addresses are given by the insurer in his petition under sub section (3) and also the claimant notice from whom the insurer has received after the filing of the said petition and in respect of whom the insurer has transmitted notice to the Court under sub section (6)

Sub-section (8) has empowered the Court to decide all questions regarding the disposal of the claims to the amount paid into Court The Court has power to decide in case of conflicting claims or in case of insufficiency of proof of title to the policy as to who is legally entitled to the amount as between all the claimants

11 Interest, payment of —There is no provision in the section as to whether Court can allow interest on the amount to the person whom it finds entitled to the amount Sub-section (5) provides that the amount being paid into Court, it shall invest the same in Government securities and hence it is intended that the amount will not lie in the custody of the Court unproductive of interest The Court has discretion to pay interest that will accrue on the securities to the rightful claimant In awarding interest the Court can also exercise its discretion as given to it by section 34 of the C P Code

An insurer should not be saddled with liability to pay any interest unless he is in default To be entitled to interest the claimant must be able to give the insurer a valid and legal discharge [2]

Claim on small life insurance policies

47A (1) In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy

1 S 35 (3) of C P Code
2. *Webster v British Empire Mutual Life* (1850) 15 Ch D 169 see also *Re Webster-house's Policy* (1937) Ch 415; *Clark v Thomson* (1919) 2 K B 700

or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Controller for decision, and the Controller may, after giving an opportunity to the parties to be heard and after making such further enquiries as he may think fit, decide the matter

(2) The decision of the Controller under this sub-section shall be final and shall not be called in question in any Court, and may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Controller as if it were a decree by that Court

(3) There shall be charged and collected in respect of the duties of the Controller under this section such fees whether by way of percentage or otherwise as may be prescribed

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Controller's jurisdiction to decide dispute sub-section* (1)
5 *Finality of Controller's decision and its executability sub-section* (2)
6 *Fees payable on reference, sub-section* (3)

1 Legislative changes —This section has been inserted by Act XLVII of 1950

2 Scope and object —The object of the section is to have a speedy disposal of any dispute relating to claim on small life insurance policies without the claimant having taken resort to a court of law for enforcing his claim The claimant has the option to have his claim, in the event of any dispute, settled on referring same to the Controller

The section confers power on the Controller to decide any dispute between a claimant under a policy of life insurance not exceeding Rs 2,000 in value and the insurer when the same is referred to him by the claimant The Controller usurps jurisdiction to decide the dispute in respect of a claim only when it is referred to him by the claimant He has no power to decide under this section on a reference from the insurer His decision in such dispute has been made final. It is neither appealable nor can it be called in question in any court His decision has the force of a decree of a civil court and is executable by the court having jurisdiction as if it is a decree passed by such court The Controller has also been empowered to charge fees either by way of percentage or otherwise as may be prescribed

3 Applicability —The provisions of this section apply only to a policy of life insurance where the assured sum does not exceed Rs 2,000 (exclusive of any bonus or profit which is not guaranteed) The provisions of the section do not apply to any other class of insurance business For its application the policy must have been issued by an insurer in respect of life insurance business transacted in India The claimant under a policy of life insurance is the only person who can invoke the provisions of this section The section shall also apply to Life Insurance Corporation of India

4 Controller's jurisdiction to decide dispute sub section (1) — Sub-section (1) confers power on the Controller to decide any dispute out of claims on small life insurance policies He can exercise

only when (*a*) there exists a dispute, (*b*) the dispute must relate to the settlement of a claim, (*c*) the claim must be on a policy of life insurance, (*d*) the life policy must not assure a sum exceeding Rs 2,000, (*e*) such sum must exclude any bonus or profit except which is guaranteed, (*f*) the life policy must be issued by an insurer in respect of insurance business transacted in India, (*g*) the dispute must arise, (*i*) between a claimant under the policy and the insurer who issued the policy, or (*ii*) between the said claimant and one who has otherwise assumed liability in respect of the said policy, and (*h*) the dispute must have been referred by the said claimant to the Controller for decision

In deciding the dispute the Controller has been given the discretion (*a*) to give an opportunity to the parties to be heard, and (*b*) to make such further inquiries as he may think fit In exercising his discretion in this regard the Controller must act judicially and not arbitrarily Before arriving at a decision in respect of the dispute above referred to, the Controller must see that natural justice is not violated

5 **Finality of Controller's decision and its executability sub-section (2)** —Sub-section (2) makes the decision of the Controller in any dispute referred to him in accordance with sub-section (1) final so that it cannot be questioned in any Court *i e*, no suit will lie in any Civil Court whereby his decision can be called in question In other words, the Civil Courts having jurisdiction over the said dispute will be precluded from entertaining any suit wherein the Controller's decision is challenged But where in deciding the dispute, principles of natural justice as well as statutory provisions of the Act requiring an opportunity to be given to the parties have not been complied with, the Civil Courts have not only jurisdiction but a duty to entertain a suit for an injunction or other appropriate remedy [1]

Sub section (2) further provides that the decision of the Controller may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Controller as if it were a decree passed by that Court In other words, the decision of the Controller has been given the force of a decree of the Civil Court and can be executed as such Hence, all questions relating to the execution, discharge or satisfaction of such a decree can also be challenged in the execution proceeding before the Court and all the provisions of the Code of Civil Procedure relating to the execution of the decree are attracted thereto

6 **Fees payable on reference sub-section (3)** —Sub-section (3) provides that prescribed fees either by way of percentage or otherwise shall be charged and collected in respect of the duties of the Controller under this section Rule 24A of the Insurance Rules 1939 prescribes such fees payable, as rupees ten or one rupee for each hundred rupees or part thereof of the amount of the claim (including any profit or bonus) whichever is greater to be paid in the form of 'Government of India Insurance Agent Licence Fee' stamps which shall be affixed on the application or letter referring the dispute to the Controller and superscribed with the signature of the claimant

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1 See *Rang Singh* v *Gurbux Singh* 1961 Punj 166 (a decision *re* Displaced Persons (Compensation and Rehabilitation) Act 1954) ; *Deoprayag Singh* v *U P Government* I L R (1959) 2 All 541 1961 All 145 (suit on allegations of lack of power or of *mala fide* exercise of power by the authority not barred a decision on U P Land Revenue Act 1911) *Subbarami Reddy* v *Nellore District Co-operative Wholesales Stores Ltd* 1961 Andh I ra 313 *State Medical Faculty of West Bang* I v *Paresh Bhaisa* 1961 Cal 31 *Manahara S Tathoora* v *Union of India* 1960 Bom 196 ; *see* also *Gokhack* v *Sura* (1950) I All E R 276 ; *Bhagwan* v *Secy of State* 1940 P C 82.

Directors of insurers being companies.

48 (1) Where the insurer is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1886, or under any Act repealed thereby, and carries on the business of life insurance, not less than one-fourth of the whole number of the Directors of the company, the number to be elected not being less than two in any case shall, notwithstanding anything to the contrary in the Articles of Association of the company, be elected in the prescribed manner by the holders of policies of life insurance issued by the company

(2) Only and all persons holding otherwise than as assignees policies of life insurance issued by the company of such minimum amount and having been in force for such minimum period as may be prescribed shall unless disqualified under sub-section (2A) be eligible for election as Directors under sub-section (1), and only and all persons holding policies of life insurance issued by the company and having been in force at the time of the election for not less than six months shall be eligible to vote at such elections

Provided that the assignment of a policy to the person who took out the policy shall not disqualify that person for being eligible for election as a Director under sub-section (1)

(2A) A person shall be ineligible for election as a Director under sub-section (1), of any company, if he is a director, officer, employee, or legal or technical adviser of that company, or of any other insurer and shall cease to be a director under sub-section (1) if he after election acquires any disqualifications specified in this sub-section or no longer holds the qualifications required by sub-section (2)

Provided that nothing in this sub-section shall disqualify a person who is an elected Director under sub section (1) and is not otherwise disqualified under this sub-section from being re-elected

Provided further that the Controller may exempt any Director of a subsidiary company of the insurer from any disqualification imposed by this sub section

(3) The Central Government may, for such period, or to such extent and subject to such conditions as may be specified by it in this behalf, exempt from the operation of this section —

(a) any Mutual Insurance Company as defined in clause (a) of sub section (1) of section 95, in respect of which the Controller certifies that in his opinion owing to the governing membership of the company or to the ditions nature of the insurance contracts

by it the application of the provisions of this section to the company is impracticable, or

(*b*) any company in respect of which the Controller certifies that in his opinion the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of Directors with the required qualifications

(4) This section shall not take effect, in respect of any company in existence at the commencement of this Act, until the expiry of one year therefrom, and in respect of any company incorporated after the commencement of this Act, until the expiry of two years from the date of registration to carry on life insurance business

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Directors of life insurance companies sub-section* (1)
5 *Qualifications of persons to be elected as Directors, sub section* (2)
6 *Disqualifications of a policy holder Director sub-section* (2A)
7 *Powers of the Central Government sub-section* (3)
8 *When the section to come into effect sub-section* (4)
9 *Procedure at election of Directors sub-section* (5)

1 Legislative changes —(*a*) The words and figures "or under the Indian Companies Act, 1882 repealed thereby" occurring in sub-section (1) were inserted by Act XI of 1939 the words "the number to be elected in any case" occurring in the said sub-section were inserted by Act XLVII of 1950, and the words "shall notwithstanding anything issued by the company" occurring in the same sub-section were substituted by Act XIII of 1941

(*b*) Sub-section (2) was inserted by Act XIII of 1941, and the words "unless disqualified sub-section (20A)" were added by Act VII of 1944

(*c*) Sub-section (2A) was inserted by Act VII of 1944, and second proviso to sub-section (2A) was substituted by Act XLVII of 1950

(*d*) The words 'Controller" and "provisions of this section" occurring in sub-section (3) were substituted by Act XLVII of 1950

(*e*) The original sub-section (2) was re-numbered as sub-section (4) by Act XIII of 1941

2 Applicability —The provisions of this section are applicable to an insurer who is a company incorporated under the Indian Companies Act, 1913, now under the Companies Act, 1956 and who carries on a business of life insurance These provisions are also applicable to insurer company carrying on a composite insurance business including life insurance business

3 Object and scope —The object of the section is to permit election of at least two Directors from amongst the policy holders of a company on its Board of Directors, which, but for the provisions of this section, is not possible

either under the Companies Act or under the Articles of Association of the company as for their election to the Board they must first be shareholders of the company Although under the Companies Act, 1956, a Director has been defined to include any person occupying the position of a Director by whatever name called,[1] yet certain restrictions are imposed by the Articles regarding a Director's requiring qualification shares within a specified time and until that is done his appointment becomes automatically cancelled after the expiry of the said period But there is no statutory requirement that a Director must hold any shares at all If the Articles do not provide for any share qualification, the shareholders have the option to elect any person not otherwise disqualified as a Director In practice, almost all the companies provide in their Articles for certain qualification shares for a Director The object of the section is principally to overrule such provisions in the Articles of Association in the appointment of Directors without the requisite share qualifications provided they are otherwise qualified to be elected within the meaning of this section In the United States of America, under some statutes policy-holders are eligible to election as Directors, although they are not stockholders[2]

This section lays down that not less than one-fourth of the whole number of the Directors of the company shall be the holders of policies of life insurance and the number to be elected must not be less than two in any case The election of policy-holder Directors will be done in the prescribed manner as provided in the Rules The section also lays down the qualifications and disqualifications for such Directors to be elected as such and the persons who will vote at such elections The section further confers discretionary power upon the Central Government to exempt any company or any Mutual Insurance Company from the operation of this section Besides this section provides that the provisions therein shall not take effect until the expiry of one year from the commencement of this Act when the company was and is in existence at its commencement and two years from the date of registration to carry on life insurance business when the company is incorporated after its commencement

4 **Directors of life insurance companies sub section (1)**—Sub-section (1) lays down that minimum number of Directors in the Board of Directors of a life insurance company incorporated under the Companies Act 1956 and under any of the previous Acts repealed thereby should not be less than one-fourth of the whole number of the Directors of the said company and of which the number to be elected not being less than two in any case from amongst the holders of policies of life insurance issued by the company The minimum number of Directors thus provided in this section from amongst the policy holders should be so even if the Articles of Association of the company provide otherwise Ordinarily, under the Companies Act every public company shall have at least three Directors but it may fix the maximum number by its Articles and where the company adopts the Regulations in Table A as its Articles the latter provides the qualification of a Director to be the holding of at least one share in the company[3] If, for instance, the Articles of a company provide that the number of Directors should not be less than three or more than twelve, and if the company actually functions with only eight Directors, at least one fourth of these eight Directors must according to this section be Directors from amongst the policy holders of the company, *i e*, two of

1 *See* S 2(13) of the said Act
2 *Lord v Equitable Life Assurance Society* 194 N Y 212
3 *See* R 66 of Table A and S 252 Companies Act, 1956

the Directors and they must be elected from amongst the policy holders according to the manner prescribed in the Rules, and they need not requir any requisite share qualifications if they have the required qualifications und this section

5 **Qualifications of persons to be elected as Directors sub-section (2)** —Sub-section (2) lays down the qualifications of persons who can be elected as Directors from amongst the policy holders of the company as provided in sub-section (1) All persons who are holders of policies of life insurance issued by the company are not eligible for election as Directors under sub-section (1) but that to be eligible for election they must have th requisite qualifications as provided by the section The qualifications that they must possess are (*a*) that they must hold policies of life insurance issued by the company of such minimum amount as is prescribed, but they must not hold these policies as assignees unless the assignment was to the person who took out the policy, (*b*) the policies must have been in force for such minimum period as is prescribed, and (*c*) they must not suffer from any dis qualifications mentioned under sub-section (2A) Rule 13 of the Insurance Rules, 1939, lays down the minimum amount of the policy to be held and the minimum period for which the same should be in force in order that a person can qualify himself to be elected as a Director of the insurance companies from amongst the policy-holders under this section He must satisfy the following requirements, namely,—

(*a*) (*i*) where the company has, before the date of election, been carrying on life insurance business for not less than five years, the policies must insure a total sum of not less than Rs 3,000 including any bonuses attached thereto before the said date, or (*ii*) in other cases the policies must insure a total sum of not less than Rs 1,000, or (*iii*) in case of annuities of human life such sum must be of a total amount of not less than Rs 250 per annum without regard to the age of the company, and

(*b*) where the company has been carrying on life insurance business for more than two years, all the polices held in compliance with clause (*a*) above shall have been in force for not less than 1 2 or 3 years, according as the company has at the date of election been carrying on life insurance business for not more than five years, for more than five but not more than eight years, or for more than eight years

6 **Disqualifications of a policy holder Director sub section (2A)** —Under sub-section (2A) a person shall be disqualified to be elected a Director from amongst the holders of policies of life insurance in accordance with sub-section (1) if he (*a*) is (*i*) a director, (*ii*) officer (*iii*) employee, or (*iv*) legal or technical adviser of that company, or (*b*) holds any of the said offices or posts under an insurer other than the company in which he is to be so elected or (*c*) acquires any disqualifications mentioned in items (*a*) and (*b*) above after he is appointed or (*d*) no longer holds the qualifications required by sub-section (2) i e he does not hold the minimum amount in value of the policies and the policies having been not in force for the minimum period as aforementioned But under the Companies Act 1956 a Director shall not be disqualified to hold the office as such if he holds directorship of any other company except the number exceeds twenty such companies or if he holds the office of a legal or technical adviser or manager in the same

company[1] Disqualifications of a Director under the Companies Act, 1956, are (*i*) unsoundness of mind, (*ii*) insolvency, (*iii*) conviction of an offence involving moral turpitude, (*iv*) non payment of any call in respect of shares, (*v*) order of the court disqualifying him,[2] (*vi*) age (section 280), and (*vii*) holding directorship in more than 20 companies (section 275)

(A) Director elected whether can be re elected proviso 1

The first proviso to sub-section (2A) lays down that a Director elected under sub-section (1) can be re-elected if in the meanwhile he does not suffer from any of the disqualifications mentioned in this sub-section

(B) Controller's power proviso 2

The second proviso to sub-section (2A) gives direction to the Controller to exempt any Director of a subsidiary company of the insurers from any disqualification imposed by this sub-section, that is, a Director of a subsidiary company can be elected to be the Director of the company to which the former is subsidiary only when the Controller exempts that Director from the disqualification of his being a Director of any other insurance company

7 **Powers of the Central Government sub section (3)**—The Central Government has been given the discretionary power by sub-section (3) to exempt (*a*) any Mutual Insurance Company as defined in clause (*a*) of sub-section (1) of section 95 of the Act or (*b*) any company from the operation of this section for such period or to such extent and subject to such conditions as it may specify in this behalf in the order of exemption It will exercise its powers under this section only when it is satisfied from the certificates of the Controller (*i*) in respect of a Mutual Insurance Company, that owing to the conditions governing membership of the company or to the nature of the insurance contracts undertaken by it the application of the provisions of this section to that company is impracticable , or (*ii*) in respect of a company that the company, having taken all reasonable steps to achieve compliance with the provisions of this section, has been unable to obtain the required number of Directors with the required qualifications Thus, the exercise of this discretionary power by the Central Government depends upon two considerations, namely, where the application of the provisions of this section is impracticable or where the required number of Directors with the required qualifications is not available

The Central Government has also the discretion to modify the qualifications of a Director under this section by fixing (*i*) for the sum insured or annuity, an amount lower than Rs 3,000 or Rs 250 respectively, or (*ii*) for the period, a period shorter than one, two or three years as prescribed in Rule 13 (1) (*b*) of the Rules

8 **When this section to come into effect sub section (4)**—Sub-section (4) fixes two periods from when the provisions of this section will come into force Firstly, it fixes one year after the expiry of the date of the commencement of the Act when the company is in existence at the date of such commencement of the Act Secondly, it fixes two years from the date of registration to carry on life insurance business when the company is incorporated after the commencement of this Act

9 **Procedure at election of Directors under this section**—There are material differences between the procedure at election of Directors under this

1 *See* S 314 of the said Act

2 *See* S 274 of the said Act

section and the procedure under the Companies Act The election shall take place at a meeting of eligible voters who are holders of policies of life insurance issued by the company The meeting is to be held at the principal office of the company or at any other place with the consent and approval of the Controller Not less than three months' notice before the meeting has to be published in newspapers both in English and vernacular languages in the place where its principal office is situated The notice must state (i) the number of Directors to be elected, (ii) the time and place of the meeting (iii) the qualifications required for oneself as a candidate, and (iv) information as to how to obtain admission to the meeting, and must also invite applications from eligible persons prepared to accept office

Persons desiring to seek election must send their applications to the principal office of the company by registered post so as to reach the place not less than two months before the date of meeting When applicants equal the number of Directors to be elected, they shall be deemed to have been elected as Directors and meeting of such election, shall be cancelled, notice of which stating the names of persons elected should be published in the newspaper or be sent to policy holders who apply for certificates of admission individually by post The contents of an application of the applicant seeking election must be in English language or the principal language of the place where the principal office of the company is situated and must contain (i) his name and address and (ii) the numbers of and amounts of the sums insured by the policies

Every policy holder voter seeking admission to the meeting must apply to the company not less than two months before the meeting for a certificate of admission by virtue of which he will be entitled to attend the meeting

The meeting shall be presided over by the Chairman of the Board of Directors or by any Director nominated by him and in the absence of both, the policy holders present shall elect a Chairman from amongst them

Before the meeting proceeds to business there must be a quorum of policy holders holding certificates of admission personally present To constitute a quorum such certificate holders must be five times the number of Directors to be elected at that meeting In the absence of such quorum the meeting shall stand adjourned to the same day in the next week at the same time and place and if no quorum is present at such adjourned meeting the policy-holders holding certificates of admission and present shall be a quorum for the meeting

Votes in the meeting may be cast either personally or by proxy In the latter case the instrument appointing a proxy shall be in writing in the prescribed Form IV C under the hand of the appointer in favour of a policy holder and shall be presented at the principal office of the company not less than one month before the date of the meeting Not more than one proxy can be appointed The vote is cast by ballot and not by show of hand The counting of votes is made by the company's auditors, and in their absence by the *scrutineers* appointed by the meeting and working under the supervision of the Chairman The result of the ballot has to be announced in the meeting and where there is equality of votes the election shall be decided by lot The Chairman has certain powers with regard to the counting of votes He has power to postpone the counting of votes by not more than 48 hours to lock seal and take charge of the ballot box and also to open the same in the presence of the candidates or their authorised representatives

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Common directorship prohibited sub section* (1)
5 *Powers of the Central Government sub section* (2)

1 Legislative changes —This section was inserted by Act XLVII of 1950

2 Applicability —The provisions of this section apply to insurers who are body corporates incorporated under the Companies Act in India including the subsidiary companies within the meaning of the said Act and who carry on the business of life insurance but are not applicable to persons in India who have standing contracts with underwriters who are members of the Society of Lloyds [1]

3 Object and scope —The object of the section is to prohibit life insurance companies incorporated under the Companies Act or any company so incorporated and carrying on life insurance business to have a common Director with another such insurer who must also be a company so incorporated and carrying on life insurance business Hence, for a Directorship of a life insurance company a Director must choose one such company and not more than one In Notes of the Government of India, it has been observed thus, this section "prohibits Indian life insurance companies from having common Directors except under certain limited circumstances" The "limited circumstances' where there may be common Directors have been laid down in sub-section (2) of this section

4 Common Directorship prohibited sub-section (1) —Sub section (1) prohibits insurer defined in sub-clause (*b*) of clause (9) of section 2 and carrying on life insurance business from having common Directors with another insurer of the like description This provision is more stringent than the provisions contained in section 275 of the Companies Act, 1956, wherein, a person, holding "office at the same time as Director in more than twenty companies" has been prohibited

5 Powers of Central Government sub-section (2) —Sub section (2) confers discretionary power on the Central Government to exempt insurers specified in clauses (*a*) and (*b*) thereof from the operation of this section Such exemption may be for such period, to such extent and subject to such conditions as may be specified by it in that regard It may at its discretion exempt (*a*) any insurer, who is a subsidiary company of another insurer or (*b*) two or more insurers with a view to facilitate their amalgamation or the transfer of business of one insurer to the other Except the two circumstances mentioned above the Central Government has no power to exempt any or more insurers from the operation of this section

Appointment of additional Directors

48C The Central Government may, in the case of an insurer specified in sub-clause (*b*) of clause (9) of section 2, appoint for such period and subject to such terms and conditions as it thinks fit, not more than two persons to be Directors in addition to the Directors already existing and the insurer shall pay to such additional Director or Directors the same fees and allowances as are payable to other Directors

1 *See* Note 5 under S 2, *supra*

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Life insurance agent, chief or special agent not to be Directors*

1 Legislative changes—This section was inserted by Act VI of 1946 and the words "no chief agent or special agent" occurring in the section was substituted by Act XLVII of 1950

2 Applicability—Like the preceding section the provisions of this section are applicable to insurers who are companies and incorporated under the Companies Act, 1956 or under any of the previous Companies Act, now repealed and transact life insurance business in India

3 Object and scope—The object of the section is to add to the list of persons holding office under the company to be disqualified for appointment or election as a Director of the company [1]

The section prohibits the appointment or election of life insurance agent, chief or special agent as a Director of any life insurance company The section does not exclude insurance agents other than life insurance agents or the principal agents It may be noted that this section and sub-section (2A) of section 48 have been modelled on the line of the Canadian Insurance Act

4 Life insurance agent, chief or special agent not to be Directors—This section lays down in mandatory language that an insurance agent soliciting or procuring life insurance business or a chief or special agent (*a*) shall be ineligible to be a Director of any insurance company carrying on life insurance business and (*b*) shall not remain a Director of that company even if he were appointed or elected as such Director But the proviso to the section saves such appointment or election for a period of six months from the commencement of the Insurance (Amendment) Act 1946 That is to say, on the coming into force of the said Amendment Act, his appointment or election as a Director and to continue as such will not automatically cease but he is permitted to continue in his office until the expiry of six months from the commencement of the said Act

48B (1) An insurer specified in sub-clause (*b*) of clause (9) of section 2 and carrying on life insurance business shall not have a common Director with another such insurer

Further provision regarding Directors

(2) The Central Government may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this section —

(*a*) any insurer, who is a subsidiary company of another insurer, or

(*b*) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other

1 *See* Note 6 under S 48 *supra*.

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Common directorship prohibited sub-section (1)*
5 *Powers of the Central Government sub section (2)*

1 Legislative changes—This section was inserted by Act XLVII of 1950

2 Applicability—The provisions of this section apply to insurers who are body corporates incorporated under the Companies Act in India including the subsidiary companies within the meaning of the said Act and who carry on the business of life insurance but are not applicable to persons in India who have standing contracts with underwriters who are members of the Society of Lloyds [1]

3 Object and scope—The object of the section is to prohibit life insurance companies incorporated under the Companies Act or any company so incorporated and carrying on life insurance business to have a common Director with another such insurer who must also be a company so incorporated and carrying on life insurance business Hence, for a Directorship of a life insurance company a Director must choose one such company and not more than one In Notes of the Government of India, it has been observed thus, this section "prohibits Indian life insurance companies from having common Directors except under certain limited circumstances" The "limited circumstances" where there may be common Directors have been laid down in sub-section (2) of this section

4 Common Directorship prohibited sub-section (1)—Sub-section (1) prohibits insurer defined in sub-clause (*b*) of clause (9) of section 2 and carrying on life insurance business from having common Directors with another insurer of the like description This provision is more stringent than the provisions contained in section 275 of the Companies Act, 1956, wherein, a person, holding "office at the same time as Director in more than twenty companies," has been prohibited

5 Powers of Central Goverament sub-section (2)—Sub-section (2) confers discretionary power on the Central Government to exempt insurers specified in clauses (*a*) and (*b*) thereof from the operation of this section Such exemption may be for such period, to such extent and subject to such conditions as may be specified by it in that regard It may at its discretion exempt (*a*) any insurer, who is a subsidiary company of another insurer or (*b*) two or more insurers with a view to facilitate their amalgamation or the transfer of business of one insurer to the other Except the two circumstances mentioned above the Central Government has no power to exempt any or more insurers from the operation of this section

Appointment of additional Directors

48C The Central Government may, in the case of an insurer specified in sub-clause (*b*) of clause (9) of section 2, appoint for such period and subject to such terms and conditions as it thinks fit, not more than two persons to be Directors in addition to the Directors already existing and the insurer shall pay to such additional Director or Directors the same fees and allowances as are payable to other Directors

1 *See* Note 5 under S 2 *supra*

1 Legislative changes—This section like section 48B has also been inserted by Act XLVII of 1950

2 Additional Directors appointment of—This section confers discretionary power on the Central Government to appoint not more than two persons to be additional Directors They are appointed in addition to the Directors already existing In appointing such additional Directors the Central Government has also power to specify the period for which they are to hold the office or to impose terms and conditions for their appointment The additional Directors may be appointed in respect of any body corporate incorporated under the Companies Act in India and carrying on insurance business as defined in sub-clause (*b*) of clause (9) of section 2 Such appointment need not be restricted to life insurance companies The duty is also imposed on the insurer, when such appointment is made, to pay these additional Directors or Director when there is one such appointment, the same fees and allowances as are payable to the other Directors Where the Articles of company confer power on the Board of Directors to appoint additional Directors it can so appoint but the number of Directors and additional Directors together must not exceed the maximum strength fixed for the Board by the Articles and these additional Directors shall hold office only up to the date of the next annual general meeting of the company [1]

49 (1) No insurer, being an insurer specified in sub-clause (*b*) of clause (9) of section 2, who carries on the business of life insurance or any other class or sub-class of insurance business to which section 13 applies shall for the purpose of declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in service of any debenture, utilize directly or indirectly any portion of the life insurance fund or of the fund of such other class or sub-class of insurance business, as the case may be, except a surplus shown in the valuation balance-sheet in Form I as set forth in the Fourth Schedule submitted to the Controller as part of the abstract referred to in section 13 as a result of an actuarial valuation of the assets and liabilities of the insurer, nor shall he increase such surplus by contributions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Controller under section 15 of this Act, to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912

Restrictions on dividends and bonuses

1 *See* S 260 Companies Act, 1956 and *Krishnajirasul Pillai* v *Colaba Land & Mills Co* 1959 Com. Cas 273

Provided that payments made out of any such surplus in service of any debentures shall not exceed fifty per cent of such surplus including any payment by way of interest on the debentures, and interest paid on the debentures shall not exceed ten per cent of any such surplus except when the interest paid on the debentures is offset against the interest credited to the fund or funds concerned in deciding the interest basis adopted in the valuation disclosing the aforesaid surplus

Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed seven and a half per cent of such surplus

(2) For the purposes of sub-section (1), the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question is made may be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in paragraph 8 (1) of the abstract prepared in accordance with Part II of the Fourth Schedule to this Act

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Payments of dividends, bonuses and service debentures , sub-section* (1)
5 *Admissible percentages of payments provisos* 1 *and* 2 *to sub section* (1)
6 *Amount permissible to be added to the surplus sub-section* (2)
7 *Is an inter valuation surplus reserved for policy-holders ?*
8 *Can the company draw on the life fund for any purpose except for payment of claims?*

1 Legislative changes —This section was substituted by Act XIII of 1941, sub-section (2) was added by Act XLVII of 1950 and section 49 was re-numbered as sub-section (1) of that section by the said Act of 1950

2 Applicability —The provisions of this section are applicable to all insurers defined in sub-clause (*a*) (ii) or sub-clause (*b*) of clause (9) of section 2 and who carry on the business of life insurance or any other class or sub class of insurance business to which section 13 applies, that is, these provisions apply firstly, to (*a*) non Indian insurers who have their principal place of business or are domiciled in India, and (*b*) Indian insurers who are bodies corporate incorporated under the Indian Companies Act of 1913 or of 1936 or subsidiary companies excluding the Lloyd's Agents, secondly, they must carry on the business of life insurance or any other class or sub-class of insurance business, *i e* , miscellaneous insurance business, and thirdly, section 13 of the Act is also applicable to them, *i e* they are required to make actuarial investigations and reports under that section

3 Object and scope —The object of the section is to restrict the insurer of the class specified in the section from declaring or paying any dividend to shareholders or any bonus to policy-holders or of making any payment in service

of any debentures out of the life insurance fund or of the fund of such other class or sub-class of the insurance business It also restricts the payment of interest upon debentures not exceeding certain percentage of the surplus and the redemption of debentures by payment of a certain percentage of the said surplus It also limits and indicates the portion of surplus which can be allocated to shareholders

What this section enacts is only a prohibition—a prohibition against the use of the inter-valuation surplus of a particular kind for specified purposes But for it a dividend might be declared out of the sum or it might be used to service debentures issued by the insurer Further, among the prohibited uses are the payment of bonuses out of the funds of an insurer whose life fund is still in deficit This section divides so to speak the profits of an insurer into two categories—an inter-valuation surplus and a surplus disclosed by a balance sheet in Form I which latter emerges only when the life fund is in excess of the net actuarial liabilities and prohibits the distribution either to shareholders or policy holders of an inter-valution surplus where the company is still in deficit and permits distribution subject to exceptions only of the surplus disclosed to the left hand side in Form I of the valuation balance-sheet 1

4 **Payments of dividends, bonuses and service debentures sub-section (1)**—Sub section (1) after prohibiting declaration or payment of any dividend to shareholders or any bonus to policy holders or in service of any debentures either directly or indirectly, out of any portion of the life insurance fund or of the fund of such other class or sub class of insurance business as the case may be, permits such payment of dividend to shareholders bonus to policy holders and in service of any debentures out of a surplus shown in the valuation balance-sheet in Form I as set forth in the Fourth Schedule of the Act and submitted to the Controller as part of the abstract under section 15, as a result of an actuarial valuation of the assets and liabilities of the insurer concerned But this surplus must not be increased by contribu tions out of any reserve fund or otherwise unless such contributions have been brought in as revenue through the revenue account applicable to that class or sub-class of insurance business on or before the date of the valuation aforesaid However this surplus may be increased out of the reserve fund when the same is made up solely of transfers from similar surpluses disclosed by valuations in respect of which returns have been submitted to the Controller under section 15 of this Act or to the Central Government under section 11 of the Indian Life Assurance Companies Act, 1912 (VI of 1912)

5 **Admissible percentages of payments Provisos 1 and 2 to sub-section (1)**—Proviso 1 to sub-section (1) lays down that when payments are made in service of any debentures out of the surplus mentioned in sub section (1) above such payments must not exceed 50 per cent of the said surplus in which any payment by way of interest on the debentures is to be included but such interest must not exceed 10 per cent of any such surplus but there may be variation in the percentage of interest when interest paid on the debentures is set off against the interest credited to the fund or funds concerned on the interest basis adopted in the valuation disclosing the aforesaid surplus

Proviso 2 to sub-section (1) further lays down that when the insurer decides upon to allocate to or reserve for the shareholders the share of any

1 *Life Assurance Co Ltd v Commr of Income-tax* (1957) 1 S C J 651 : (1956) 30 I T R 603 : 1957 Mad 387 591 (2)

such surplus such allocation or reservation including any amount for the payment of dividends guaranteed to them, whether by way of first charge or not, must not exceed 7½ per cent of the said surplus

It may be noted that the balance of the said surplus, namely, 42½ per cent of it may be available, if so decided by the insurer, as bonus to the policy holders, although no express provision to that effect is made in the section

6 **Amount permissible to be added to the surplus sub section (2)** — Sub-section (2) lays down what further sum can be added to the surplus mentioned in sub-section (1) For the purposes of determination of the surplus out of which dividends, bonus s and service debentures can be paid, the actual amount of income tax deducted at source, in between the previous valuation and the valuation in question out of which the relevant surplus is shown, may be added to the said surplus, but at the same time from the surplus so arrived an estimated amount for income-tax on such surplus must be deducted therefrom Thus, if '*X*' amount of income tax was deducted at source in between the valuation of the year ending 31st December, 1960 and the valuation of the year ending 31st December 1963, which is the year of the valuation out of which the relevant surplus is shown the said '*X*' amount may be added to the surplus of the valuation of 1963 less '*Y*' amount being the estimated amount of income tax payable on the said surplus Before adding the said amount $(S+X-Y)$, the said addition and deduction must have been shown in paragraph 8 (1) of the abstract prepared in accordance with Part II of the Fourth Schedule to this Act

7 **Is an inter valuation surplus reserved for policy holders?**— A close examination of Form G in the Fourth Schedule to this Act would show that there is no basis for the theory, that an inter valuation surplus is reserved for policy holders by statute The balance of the life fund at the beginning of the period together with the further additional income which flows into it goes into making up the total on this side The balance at the end of the year which is shown at the left hand column of the account need not always or necessarily be in excess of the figure which forms the first item on the right hand side During the year the company might have expended sums over and above the net receipts for the year by way of expenses of man gement which would include salaries to the staff, their travelling expenses as well as the remuneration to the Directors, etc these being some of the 13 heads under which expenses of management are classified in that form There might also be bad debts in the investment of the life fund which might be written off during the year The net result of taking into account all these items might very well be that the life fund at the end of the year is less than the life fund at its beginning The inter-valuation profit is really an actuarial computation of the liabilities to which the life fund is subject at two dates separated from each other by a fixed number of years [1]

8 **Can the company draw on the life fund for any purpose except for payment of claims?**—The argument that a life fund can exist only because it is exclusively set apart for the policy-holders and the company cannot draw on it for any purpose except for payment of claims, should not be accepted The company is able to deal with the life fund on the basis of which, of course, the inter-valuation surplus is calculated, it is subject to

1 *Indo Union Assurance Co Ltd* v *Commissioner of Income-tax*, [illegible]

diminution by expenditure on items other than payment of claims under policies Therefore the life fund is at the disposal of the company for being used to meet its expenses, including the salaries of the Directors and their allowances, to mention only a few, which would clearly show that there is no reservation for policy-holders The fact that the life fund is not a fixed sum but a fluctuating one, though of course, in a majority of cases, having a tendency to increase, with still the possibility of there being a diminution of it reveals its true character A portion of the life fund, which might be said to represent inter-valuation profit, can be utilised by the company for its purpose as seen from Form G, the revenue account But when once a reservation has been made it cannot be drawn up in by the company for being used for any purpose of its own including the expenses of management There is a segregation of that fund and it gets impressed with a trust in favour of the policy holders [1]

50 An insurer shall, before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid, give notice to the policy holder informing him of the options available to him unless these are set forth in the policy

Notice of options available to the assured on the lapsing of a policy

SYNOPSIS

1 *Legislative changes*
2 *Scope and object*
3 *Applicability*
4 *Notice on the lapsing of policy*

1 Legislative changes—The words "before the expiry of" in the policy' were respectively but not paid' and "unless these substituted by Act XI of 1939 and added by Act XIII of 1941

2 Scope and object—This section imposes a duty on the insurer to give notice to the policy-holder informing him of the options available to him to be exercised by him in respect of whose life policy the premiums were payable but not paid Such notice is to be given before the expiry of three months from the date on which the premiums payable were due but not paid But this section dispenses with such notice being given to the policy holder when these options are set forth in the policy

The object of the section is to afford an opportunity to the policy holder to decide as to whether he will receive the surrender value or a paid up policy in case he does not desire to continue the policy by paying the premiums any further

3 Applicability—This section applies to the policies of life insurance and to all insurers carrying on the business of life insurance or transacting such business in India The section shall also apply to the Life Insurance Corporation of India

4 Notice on the lapsing of policy—This section as it originally stood ran as follows

An insurer shall within three months of the lapsing of a policy of life insurance give notice to the policy holder informing him of the option available to him

[1] *Indo-Burma Insurance Co Ltd v Commissioner of Income-tax* 1957 Mad 587 at p. 592 (1957)

So under the original section what was intended was to give notice to the policy holder on the lapsing of a policy of life insurance, but what is intended by the present section as it stands after the amendment is that notice is to be given, unless the options are set forth in the policy, before the expiry of three months from the date on which the premiums were payable but not paid The effect of the amendment then is that the policy does not lapse until after the expiry of three months from the date on which the premiums in respect thereof were payable but not paid, *i e*, until after the expiry of three months from the due date But this due date should not be reckoned from the date of "days of grace" because the time allowed to the assured for doing other acts than payment of the premiums or for exercising other privileges like the one envisaged in this section would mean three months from the commencement of the due date and not from the expiration of the "days of grace" allowed by the policy [1] Although the effect of the amendment, as stated above, is that the policy does not lapse before the notice is issued, but the marginal note to the section indicates that the notice is intended to be issued on the lapsing of the policy But in the interpretation of a statute it has been said that the marginal notes are not to be taken as parts of the statute [2]

This section has also to be read along with sub-section (') of section 111 of the Act which requires notices to be given to a transferee, assignee or nominee as the case may be, when he has given notice to the insurer of his interest in the policy

Now-a days all policies of life insurance provide for this option and they are set forth therein and hence this section in such cases becomes a dead letter Sometimes under the terms of policy the insurer applies the surrender value towards payment of premiums when they become due and not paid and continues doing so until the said value is exhausted when as a prudent insurer he should give notice to the assured intimating him of the option to be exercised under this section

51 Every insurer shall, on application by a policy holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith

Supply of copies of proposals and medical reports

This section imposes a statutory obligation on the insurer to supply to the policy-holder, when an application to that effect is made to him and a fee not exceeding Re 1 is paid, certified copies of the questions and answers made thereto in the proposal for insurance and in the medical report which led the issuing of the policy in question The object seems to be that it affords the policy holder an opportunity to know what answers were given to what questions and to keep same with him for future reference and to be forewarned about any possible misstatements made therein either to justify same in case of any action being taken by the insurer for avoidance of the policy or to correct any of them The section shall also apply to the Life Insurance Corporation of India

1 *Mc henna v City Life* (1919) 2 K B 491 *Salvin v James* (1805) 6 East 571 *see* also Note 14 under head Payment of premium in S 2 *supra* at p 72

2 *See* Maxwell Interpretation of Statutes, p 45

52 (1) No insurer shall after the commencement of this Act, begin, or after three years from that date continue to carry on, any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by a policy-holder depend wholly or partly on the number of policies becoming claims within certain time limits

Prohibition of business on dividing principle

Provided that nothing in this section shall be deemed to prevent an insurer from allocating bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums insured or as immediate cash bonuses or otherwise

Provided further that an insurer who continues to carry on insurance business on the dividing principle after the commencement of this Act shall withhold from distribution a sum of not less than forty per cent of the premiums received during each year after the commencement of this Act in which such business is continued so as to make up the amount required for investment under section 27

(2) On the expiry of the period of three years referred to in sub-section (1), or on the insurer's ceasing before such expiry but at any time after the commencement of the Insurance (Amendment) Act, 1941, to carry on business on the dividing principle, the insurer shall forthwith cause an investigation to be made by an actuary, who shall determine the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of those policy holders against the realisable assets of the insurer, and shall, before the expiration of six months from the date on which he is entrusted with the investigation, make recommendations regarding the distribution, whether by cash payments or by the allocation of paid up policies or by a combination of both methods, of such assets as he finds to appertain to such policy-holders, and the insurer shall, before the expiry of six months from the date on which the actuary makes his recommendations, distribute such assets in accordance with those recommendations

(3) Where at any time prior to the commencement of the Insurance (Amendment) Act, 1941, an insurer has ceased to carry on business on dividing principle, the insurer shall, before the expiration of two months from the commencement of that Act, report to the Controller the measures taken or proposed by him

for the distribution amongst holders of policies to which the dividing principle applies of the assets due to them, and the Controller may either sanction such measures or refuse his sanction, and if he refuses his sanction or if the insurer does not report to him as required by this sub-section, the provisions of sub-section (2) shall apply to the insurer forthwith

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Insurance business on dividing principle sub section (1)*
5 *Insurer carrying on business on dividing principle at the commencement of the Act, his duty proviso 2 to sub-section (1)*
6 *Insurer's further duty sub-section (2)*
7 *Insurer's duty to report to the Controller sub section (3)*

1 Legislative changes—This section is re numbered as sub-section (1) and sub sections (2) and (3) are added by Act XIII of 1941

2 Applicability—The provisions of this section are applicable to all classes or sub-classes, as the case may be, of insurance business and hence all insurers carrying on any class of insurance business in India come within the fold of this section The section shall also apply to the Life Insurance Corporation of India

3 Object and scope—The object of this section is not only to discourage and prohibit the business of insurance upon the basis known as the 'dividing principle', but it purports to abolish the said system altogether within certain specified times

What this section lays down is that first of all, no new insurance business shall be started on the dividing principle after commencement of this Act, that is to say, after 1st July, 1939, secondly, as regards those already in existence on that date, it permits them to carry on for a further three years and no more However, it does not exempt them from the necessity of registration under section 3 of the Act, in other words, it cannot be said that this section has been made an exception to section 3 of the Act so as to exempt such insurers from the necessity of registration and obtaining certificates of registration in order that they can carry on their business [1]

4 Insurance business on dividing principle sub section (1)—Sub-section (1) prohibits an insurer from carrying on any kind of insurance business upon the dividing principle in two ways, firstly it prohibits him to begin any such business after the commencement of the Act, *i e*, after 1st July, 1939, secondly and lastly, it prohibits him if he has been carrying on such business under the said system at the commencement of the said Act, from continuing the said business upon the said system after three years from the date of the commencement of the said Act, *i e*, the said system of business has to be abolished after three years from the said date

The system of dividing principle as envisaged in this sub-section may be of two kinds, namely, (1) the principle by which the benefit secured by a policy is not fixed but is variable and depends either wholly on partly

1 *G R Deo v F Karim*, I L R (1946) Nag 286 1945 Nag 195 *supra* *ie* also Note 3 under S 3 *supra*

on the result of a distribution of certain sums amongst policies becoming claims within certain time-limits, or (2) the principle by which the premiums payable by a policy holder depend wholly or partly on the number of policies becoming claims within certain time limits But the mere fact that an insurer allocates bonuses to holders of policies of life insurance as a result of a periodical actuarial valuation either as reversionary additions to the sums assured or as immediate cash bonuses or otherwise will not make his business of insurance as a business upon the dividing principle. Hence proviso 1 to this sub-section permits the insurer to allocate such bonuses to his policy holders [1]

5 Insurer carrying on business on dividing principle at the commencement of the Act, his duty Proviso 2 to sub-section (1)—Proviso 2 to sub-section (1) lays down the statutory duty of an insurer who continues to carry on insurance business on the dividing principle as stated above after the commencement of the Act His duty is to withhold from distribution amongst policies a sum of not less than 40 per cent of the premiums received during each year after the commencement of this Act, *i.e.*, for these three years for which he has been allowed to continue the business on the dividing principle he must not distribute not more than 60 per cent of the premiums received during these years the balance, *viz.*, 40 per cent of the premiums in each year received would go towards making up the amount required for investment under section 27, *see* Notes under that section *supra*) (For investment under section 27, *see* Notes under that section *supra*)

Thus, where a person became a member of an association incorporated and registered under the Companies Act, but before the Insurance Act, 1938, was passed and where the Rules as they existed were based on the dividing principle but his claim accrued after the Insurance Act came into force, the contract of such a person with the association based on the original Rules then in force became unenforceable by reason of this section which prohibited business on dividing principle, and hence he was governed by the second proviso of this sub section with the result that the association would have to withhold a sum not less than 40 per cent of the premiums received although the original Rules provided for 10 per cent only a

6 Insurer's further duty **sub-section (2)**—The object of sub-section (2) in imposing the dates mentioned therein on the insurer is to provide 'for the equitable winding up of all insurance business on the dividing principle except in cases where the Controller of Insurance sanctions the measure for winding up already taken "[2]

The provisions of sub section (2) would come into operation only under two circumstances *viz* (1) on the expiry of the period of three years after the date of the commencement of the Act, *i.e.* after 1st July, 1939, or (2) on the insurer's ceasing to carry on the business on the dividing principle

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1 *See Joseph* v *Law Integrity* (1912) 2 Ch 581 (where distinction between life insurance and bond investment business pointed out) *Lancashire Insurance* v *Inland Revenue Commissioners* (1899) 1 Q B 353 (employer's liability policy held not life insurance) *Hampton* v *Yorkshire* (1915) 1 Ch 721 (society distributing profits in the form of payments to the widow or widower of a member on the member's death held not life insurance business but see *Nelson* v *Board of Trade* (1901) 84 L T 565 for group insurance see *Bawskill* v *Dawson* (1935) 2 Q B 13 *Green* v *Russel* (1959) 2 Q. B. 226

2 *All India Railwaymen's Benefit Fund* v *Bahadurgarh* 1 L R (1945) Nag 399 : 1945 Nag L J 249 : 1945 Nag 187

3 *See* Notes of the Government of India.

before the expiry of the said date but at any time after the commencement of the Insurance (Amendment) Act, 1941 (XIII of 1941)

Under either of the two circumstances occurring as aforesaid to any insurer his duties would be (1) to forthwith cause an investigation to be made by an actuary for the purpose of determining the amount accumulated out of the contributions received from the holders of all policies to which the dividing principle applies and the extent of the claims of these policy-holders against the realisable assets of the insurer, and (2) to distribute such assets in accordance with the recommendations of the actuary before the expiry of six months from the date of the actuary's recommendations

The duties of an actuary under this sub-section would be (*i*) to determine the amount accumulated out of the contribution received from the holders of all policies to which the dividing principle applies, (*ii*) to determine the extent of the claims of those policy-holders against the realisable assets of the insurer and (*iii*) to make recommendations before the expiry of six months from the date on which he was entrusted with the investigation His recommendations would be principally with regard to the distribution of such assets as he would find to appertain to such policy-holders and its manner, *i e*, whether to be made by cash payment or by the allocation of paid up policies or by a combination of both methods

7 Insurer s duty to report to the Controller sub-section (3) — An alternative to an investigation being made by an actuary has been given to the insurer in sub-section (*3*) where he had ceased to carry on the business on the dividing principle prior to the commencement of the Insurance (Amendment) Act, 1941, aforementioned In such a case he has to report to the Controller, the measures taken or proposed by him for the distribution, among holders of policies to which the dividing principle applies, of the assets due to them He shall have to report this before the expiration of two months from the commencement of the said Amendment Act

On receiving such a report from an insurer within the said specified time the Controller has the discretion either to accord his sanction to the said measures taken or proposed by the insurer or he may refuse such sanction The provisions of this sub-section would not be available to the insurer when the Controller refuses his sanction as above or the insurer fails to report to the Controller as provided in this sub-section In either case, the provisions of sub-section (2), namely, of causing an investigation to be made, would forthwith apply to the insurer

MANAGEMENT BY ADMINISTRATOR

Sections 52A to 52G were inserted by Act XLVII of 1950 whereby various provisions have been made regarding management of insurance company by an Administrator when the latter is appointed His powers and duties and the termination of his appointment have also been provided therein

Sections 52A to 52G of this Act added by the Insurance (Amendment) Act, 1950, do not abridge the rights conferred by Art. 19 (1) (*f*) and (*g*) and Art 31 (*2*) of the Constitution of India and are not void within Art. 15 (-) of the Constitution The impugned legislation imposes restrictions on the [illegible] of management of the business of an insurer for a limited period for the benefit of the general body of policy-holders Clearly, the restrictions are [illegible] and in the interest of the general public and are saved by Art 19(

of the Constitution The nature, purpose and scope of the impugned legislation show that the "pith and substance" of the impugned legislation is the regulation of insurance corporations and the winding-up of such corporations, if that be most advantageous to the general interests of the holders of life insurance policies In other words, the impugned legislation is not directly in respect of the subjects dealt with in Art 19 (1) (f) and (g) and Art 31 (2)[1]

52A (1) If at any time the Controller has reason to be When Administrator for management of insurance business may be appointed believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such insurer to be heard as he thinks fit, make a report thereon to the Central Government

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Controller

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Controller the Administrator shall not issue any further policies

(5) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of the management

(6) The Controller may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Controller at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management

SYNOPSIS

1 *Object and scope*
2 *Controller his functions whether judicial or quasi judicial*
3 *Whether writ can be issued against the Controller*
4 *Opportunity to insurer to be heard*
5 *Duty of Controller Initiation of proceedings and power of the court to interfere*
6 *Power of the Central Government*

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1 *Jupiter General Insurance Co Ltd v Rajagopalan* (1952) 22 Com Cas (Ins) 33 : 1952 Punj 2.

1 Object and scope —The object of this section as also the sections following regarding management by Administrator is to 'provide for the appointment of an Administrator to manage the affairs of an insurer under certain circumstances and for the Controller-General to take necessary action with regard to the future of the insurer, after getting a report from the Administrator "[1]

The other provisions in the Act making a distinction between life insurance business and general insurance business, the keeping of separate accounts and balance sheets have been enacted for the safeguard of the holders of life insurance policies and they provide an overall picture of the business done by the insurer showing the exact state of affairs concerning the life insurance business of the insurer Those provisions cannot and do not affect the provisions of this section [2]

This section is not restricted to insurer carrying on life insurance business The reason being that sub-section (1) of this section speaks of "an insurer carrying on life insurance business" It does not speak of 'only life insurance business" Where an insurer is carrying on insurance business of various kinds which include life insurance business, he becomes amenable to the provisions of this section if he is acting in a manner prejudicial to the interests of the holders of life policies and he would have to suffer the consequences following the report made by the Controller and the appointment of an Administrator by the Government [3]

2 Controller, his functions, whether judicial or quasi judicial — Primarily the duties of Controller are executive or ministerial While acting under this section he seems to be a Vigilance Officer of the Central Government whose duty it is to keep an eye on Insurance Companies and to see that they are acting fairly towards the interests of holders of life insurance policies When he has reason to believe that they are not behaving properly, his functions come into operation and in discharging those functions he is under no obligation to the Insurance Company, his obligations, really speaking, are to the holders of life insurance policies He does not determine question He may and can only recommend executive action to withdraw the privilege of management from the insurer The information with the Controller may be so simple that he may not think it would serve any useful purpose to make any inquiry from the insurer, or the situation may be so emergent that delay would defeat the ends which the Legislature had in view The Controller is a Vigilance Officer and as a reporting and ministerial officer of the Government aids the Government in the discharge of its police functions The Controller's proceedings while acting under this section are purely ministerial and involve no judicial element Even if it may be held that he determines questions affecting the rights of an insurer, there is not "super-added to that characteristic the further characteristic that the body has the duty to act judicially" [4]

3 Whether writ can be issued against the Controller —As has been stated in the foregoing Note 2 that the Controller when exercising functions under this section is not acting judicially or quasi judicially and as such no writ of *certiorari* or prohibition can be issued against him [5]

4 Opportunity to insurer to be heard Duty of Controller —T ...h under the second part of sub-section (1) of this section the extent ...

1 Notes of the Government of India
2. *Tropical Insurance Co v Union of India* (1955) 2 S C R 517 : 1955 S C 789 (1955) 25 Com Cas 91 : 1956 S C J 11
3 *Ibid*
4 *Jupiter General Insurance ... gopalan*, 1952 Punj 9,
5 *Ibid*

52BB (1) If the Administrator is satisfied that any person has rendered himself liable to be proceeded against under section 106, he may, pending the institution of proceedings against such person under that section, by order in writing prohibit him or any other person from transferring or otherwise disposing of any property which, in the opinion of the Administrator, would be liable to attachment in proceedings under that section

Powers of Administrator respecting property liable to attachment under section 106

(2) Any person aggrieved by an order made by the Administrator under sub-section (1) may, within fourteen days from the date on which the order is served on him, appeal against such order to the Central Government, and the Central Government may pass order thereon as it thinks fit

(3) Any order made by the Administrator under sub-section (1) shall, subject to any order made by the Central Government on appeal, be in force for a period of three months from the date of the order unless, before the expiry of the said period, an application is made under sub-section (1) of section 106 to the court competent to exercise jurisdiction under that sub-section, and when such application is made, the order shall, subject to any order made by that court, continue in force as if it were an order of attachment made by that court in proceedings under that section

(4) An order made by the Administrator under this section shall—

(a) in the case of an order affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908, and

(b) in the case of an order affecting a person not being a corporation or firm, be served on such person—

(i) personally, by delivering or tendering to him the order, or

(ii) by post,

(iii) where the person cannot be found, by leaving a copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain, and every such order shall also be published in the official Gazette.

(5) If any question arises whether a person was duly served with an order under sub-section (4), the publication of the order in the official Gazette shall be conclusive proof that the order was so served, and a failure to comply with the provisions of clause (*a*) or clause (*b*) of sub-section (4) shall not affect the validity of the order

(6) Notwithstanding anything contained in this section, any property in respect of which an order has been made by the Administrator may, with the previous permission of the Administrator and subject to such terms and conditions as he may impose, be transferred or otherwise disposed of

(7) Notwithstanding anything contained in any other law for the time being in force, the transfer or other disposition of any property in contravention of any order made by the Administrator under this section or of any terms and conditions imposed by him shall be void

(8) For the purpose of enabling him to form an opinion as to whether any property would be liable to attachment in proceedings under section 106 or for the purpose of enabling him to institute proceedings under that section, the Administrator may require any person to furnish information on such points or matters as, in the opinion of the Administrator, may be relevant for the purpose, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code

(9) The Administrator shall have all the powers of a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely,—

(*a*) summoning and enforcing the attendance of witnesses and examining them on oath ,

(*b*) requiring the production of documents , and

(*c*) receiving evidence on affidavits ,

and any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code

(10) Save as provided in this section or in section 106, and notwithstanding anything contained in any other law for the time being in force,—

(*a*) no suit or other legal proceeding shall lie in any court to set aside or modify any order of the Administrator or the Central Government made under this section, and

(b) no court shall pass any decree, grant any injunction or make any other order which shall have the effect of nullifying or affecting in any way any such order

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Power of the Administrator sub-section (1)*
4 *Appeal by aggrieved person sub-sections (2) and (3)*
5 *Administrator's order, service, manner of*
6 *Transfer and disposal of property*
7 *Administrator's further powers*
8 *Suits or legal proceedings, bar of*

1 Legislative changes—This section was inserted by Act LIV of 1955 with effect from 1st November, 1955

2 Object and scope—The object of this section is to empower an Administrator appointed under the preceding section 52A to attach any property which may be liable to attachment by the Court in proceedings under section 106, pending the institution of such proceedings by him under that section against any delinquent insurer The order passed under this section by the Administrator is in the nature of *interim* prohibitory orders against the delinquent insurer from transferring or disposing of his properties which are liable to attachment under section 106 of the Act The orders under this section are to remain in force for a period of three months and before the expiry of which an application to the Court under section 10o has to be made when subject to the orders of the Court, the order may continue in force as if it were passed by the Court in the proceedings before it A right of appeal has been conferred on the aggrieved party who may prefer such appeal to the Central Government within 14 days from the date of service of the order The Administrator has been given for the purposes of this section, certain powers which a civil court ordinarily exercises in respect of summoning witnesses, examining them on oath, requiring production of documents and receiving evidence on affidavits He has also been empowered to require of any person to furnish him with any required information Failure in this regard would bring the person within the mischief of sections 176, 193 and 228 I P Code Except the right of appeal an aggrieved person has no remedy against the order of the Administrator in any Civil Court as all suits in respect of the said order have been expressly barred

3 Power of the Administrator sub-section (1)—Sub section (1) confers discretionary power on the Administrator to prohibit by order in writing any person who has rendered himself liable to be proceed d against under section 106 or any other person from transferring or otherwise disposing of any property which is liable to attachment in proceedings under the said section Before exercising his discretion the Administrator must be satisfied with regard to two points *viz* (*i*) that the person against whom the prohibitory order is made, has rendered himself liable to be proceeded against under section 106 and (*ii*) that the property in respect of which the order is made would be liable to attachment in proceeding under the said section Unless these two elements are sufficiently clear from his order it is liable to be set aside as being bad [1]

4 Appeal by aggrieved person sub-sections (2) and (3)—Any person who considers himself aggrieved by an order passed against him by the Administrator under sub-section (1) has been given the right of appeal

1 *See also* Notes under S 106 *post*

by sub-section (2) against the said order The appeal shall lie to the Central Government and time-limit for filing such an appeal is 14 days from the date on which the order is served on him In dealing with the appeal the Central Government has been given the power to pass such order thereon as it thinks fit, i e , it can set aside the order, or can modify or affirm the same

The order of the Administrator under sub-section (1) remains in force for a period of three months from the date of the order and unless he makes an application within the said period to the Court competent to exercise jurisdiction under section 10b, the order will automatically lapse after the said period of three months But when he makes an application to the Court having jurisdiction under section 106 the order passed by him may continue to remain in force, subject to any order of the Court, as if it were made by the Court in the proceedings under the said section The order of the Administrator remaining in force for a period of three months as stated above, is, however, subject to any order passed by the Central Government in appeal, if any appeal is at all filed against the said order

5 **Administrator's order, its service, manner of sub-sections (4) and (5)** —The order of the Administrator is to be served in the manner as follows

(*a*) every order whether affecting corporation, firm or individual has to be published in the official Gazette ,

(*b*) when the order to be served affects a corporation the order may be served—

(i) on the Secretary, or on any director, or other principal officer of the corporation , or

(ii) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business ,

(*c*) when the order to be served affects a firm, the order may be served—

(i) upon any one or more of the partners, or

(ii) at the principal place at which the partnership business is carried on within India upon any person having, at the time of service, the control or management of the partnership business there

But in the case of a partnership which has been dissolved to the knowledge of the Administrator before the order is made, the order shall be served upon every person within India whom it is sought to make liable ; and

(*d*) when the order to be served affects an individual, it may be served—

(i) personally on him by delivering or tendering to him the order, or

(ii) by post, or

(iii) by leaving a copy of the order with some adult member of his family at his dwelling with copy to some conspicuous part of the premises in which he is known

resided or carried on business or personally worked for gain, in case where the individual to be served cannot be found.

Sub-section (5) lays down that validity of the Administrator's order shall not be affected by reason of the failure to serve the said order on the corporation, firm or individual, as the case may be, in the methods respectively stated in items (b), (c) and (d) above, when the said order is published in the official Gazette as stated in item (a) above, such service will be a conclusive proof that the order was so served, in case any question arises regarding the service of order under sub-section (4)

6 **Transfer or disposal of property, sub-sections (6) and (7)—** Sub-section (6) lays down that in spite of an order made by the Administrator under sub-section (1) any property being affected by the said order may be transferred or otherwise disposed of with previous permission of the Administrator and subject to such terms and conditions as he may impose in that behalf But when there is no such previous permission any transfer or other disposition of the said property in contravention of the Administrator's order in that behalf shall, according to sub-section (1), be void Even if such transfer or disposition is made with his permission but contravening any terms or conditions for such transfer, the transfer or disposition shall also be void Voidability of the transfer or disposition would not be covered by any law in force to the contrary, if there be any

7 **Administrator's further powers, sub-sections (8) and (9)—** Sub-section (8) envisages that an Administrator may require certain information for two purposes, *viz*, (i) to enable him to form an opinion as to whether any property would be liable to attachment in proceedings under section 106, and (ii) to enable him to institute proceedings under the said section Hence, the said sub-section empowers him to require any person to supply him the said information on such points or matters as may be relevant for the purpose and as will be required by him The person who is required to furnish the said information is legally bound to so furnish If that person fails to give the required information he shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both under section 176, I P Code

Sub-section (9) on the other hand clothes the Administrator with all the powers of a Civil Court under the Code of Civil Procedure, 1906, while trying a suit in respect of the following matters, namely,—

(a) summoning and enforcing the attendance of witnesses and examining them on oath ,

(b) requiring the production of documents , and

(c) receiving evidence on affidavits

That is to say for the purposes of above-noted matters the Administrator has power to proceed under the provisions of Orders XVI, XVIII and XIX of the First Schedule of the Code of Civil Procedure, 1906, that is to say —

(a) where the witness does not appear or has failed to produce the document the Administrator has power to issue a proclamation requiring him to attend or to produce the document or issue a warrant with or without bail for the arrest of such person or impose upon him such fine not exceeding five hundred rupees ,

(*b*) he can take down the evidence of the witnesses orally and make a memorandum of the substance of what each witness deposes and such memorandum when signed and written by him shall form part of the record and he has also power to recall any witness who has been examined , and

(*c*) he may for sufficient reason order that any particular fact or facts may be proved by affidavit and such affidavits must be confined to such facts as the deponent is able of his own knowledge to prove

Sub-section (9) also lays down that any proceeding before the Administrator under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, I P Code, that is to say, the witness shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine if the witness intentionally gives false evidence in any stage of the proceeding before the Administrator under section 193, I P Code , or he or any person intentionally offering any insult or causing any interruption to the Administrator while the latter is sitting in any stage of the proceeding before him, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both under section 228, I P Code

8 **Suits or legal proceedings, bar of sub section (10)** —Sub-section (10) prohibits any suit or legal proceeding being brought against the order of the Administrator or the order of the Central Government made under this section In other words, the order made by the Central Government under this section presumably in appeal against the order of the Administrator or the order of the Administrator made under this section if no appeal is preferred has been made final The order either of the Administrator or of the Central Government in appeal can neither be set aside nor modified by way of suit Moreover, the Court has been expressly prohibited from passing any decree, granting any injunction or making any other order which shall have the effect of nullifying or affecting in any way the order passed either by the Administrator or in appeal by the Central Government The order of the Administrator can be challenged only by way of appeal to the Central Government or if no appeal is preferred, and when an application is made by the Administrator under section 106 to the Court the latter has jurisdiction to examine the propriety of the order, *i e*, whether the same shall continue throughout the proceedings before it or the same be set aside or modified In case no such application is made within the period specified, the order of the Administrator will automatically lapse after the expiry of three months from the date of the order and the person affected thereby will be at liberty to deal with the property as he likes, *i e*, there will be no bar to transfer or otherwise dispose of it as he likes according to the ordinary incidents of ownership of that property

9 **Inspector under the Companies Act and Administrator under this Act, position compared** —The positions of an Inspector appointed under sections 235 and 237 of the Companies Act, 1956 and the Administrator appointed under this Act are more or less similar in purpose but they differ widely in their respective functions Both of them are appointed by the Central Government, Inspector for the purpose of investigating the affairs of any company and to report to the Central Government on the conclusion of the investigation with power to make interim reports to that Government, and Administrator for the purpose of managing the affairs of the

under the direction and control of the Controller An Inspector or Inspectors can be appointed on the application of the shareholders or on the report of the Registrar or on Court's order or even the Central Government has power to appoint such Inspector or Inspectors *suo motu*, but the Administrator is appointed only on the consideration of the report of the Controller, where the latter has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of life policy-holders but an inspector under the Companies Act is appointed where there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other persons or the persons concerned or in the formation of the company the promoterr have been guilty of fraud, misfeasance or other misconduct or the members have not been given all the information with respect to its affairs which they might reasonably expect

The Inspector under the Companies Act like the Administrator has power to examine, whenever necessary, any officers, agents or employees of the company and may summon and examine them on oath He can also require any of them to produce any book or paper before him But the most essential difference between the two is that the duties of an Inspector are neither judicial nor quasi judicial[1] and the investigation proceedings are also not in the nature of criminal proceedings[2] but the proceedings before the Administrator have been made judicial proceedings[3]

Under the English Insurance Companies Act, 1958, the Board of Trad has power to appoint one or more Inspectors to investigate the affairs of the company in case of doubtful solvency and the Inspector or Inspectors so appointed is or are to report thereon in such manner as the Board may require These Inspectors have been given the same powers as the Inspectors under the Companies Act, 1948, have under sections 166 and 167 of the said Act[4]

52C The Administrator may, at any time during the continuance of his appointment with respect to an insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interests of holders of life insurance policies

Cancellation of contracts and agreements

Note

This section confers additional powers on the Administrator to cancel or vary any contract or agreement other than a policy entered into between the insurer whose business he has taken over as being vested in him and any other person But this cancellation or variation of the contract can only be made when he is satisfied that if such contract or agreement be allowed to be left outstanding it would be prejudicial to the interests of the

1 *Coimbatore Spinning and Weaving Co Ltd* v. *Manuel Pharoah & Sons Ltd* 1959 Com Cases 97; 1959 Mad 229

2 *Veerapandi Beariar* v. *Manuel Pharoah* 1959 Com Cases 97; 1961 S C 29 on appeal from 1959 Mad 229

3 Born 320 *See* also S 167 of the English Companies Act 1948

4 *See* S 14 of the Insurance Companies Act 1958

life policy-holders Such cancellation can be made unconditionally or he may impose such conditions in its variation But before he cancels or varies any contract or agreement under this section, he must give an opportunity to other parties to the contract of being heard in the matter The power given under this section is discretionary and he must exercise his discretion in this regard judicially and not arbitrarily The Supreme Court has observed that the fact the Administrator did not cancel any contract entered into on behalf of the insurance company under the powers given to him under this section does not mean that any such contract was in the interest of insurance company [1]

Termination of appointment of Administrator

52D If at any time, on a report made by the Controller in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator

Note

This section confers discretionary power on the Central Government to cancel the order by which an Administrator was appointed by it in respect of an insurer But it should exercise its discretion under this section only on the consideration as follows (i) that it has received a report from the Controller and (ii) that from the report of the Controller it must appear to it that (*a*) the purpose of the order appointing the Administrator has been fulfilled or (*b*) there is any other reason that it is undesirable that the order of appointment should remain in force There is no time-limit fixed for the Central Government to make the order of cancellation under this section The order of cancellation may be made at any time provided the aforsaid conditions are satisfied

When the order cancelling the appointment of the Administrator is made, the Administrator becomes divested of the management of the insurance business in respect of the insurer concerning whom he was so appointed and the management of whose business vested in him under sub section (4) of section 52A In other words, as soon as the order of cancellation of the Administrator is passed he ceases to manage the business of the insurer The effect of the order of cancellation of the order under this section is to relegate the business of insurance to its former position, i e, to put it in the same position as it was before the Administrator was appointed In consequence the management of the business would again vest in the person in whom it was vested immediately before the date of appointment of the Administrator But the Central Government has been given the power under this section to direct otherwise, in that case the business of insurance may not vest with the original insurer

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1 *R. K. Dalmia v Delhi Administration*, 1962 S C 1821

52E Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court

Finality of decision appointing Administrator

Note

This section makes the orders of the Central Government in appointing and cancelling the appointment of an Administrator final Such orders passed by the Central Government under sections 52A (appointing an Administrator or cancelling his appointment and re-appointing another in his place) and 52D (cancelling the order of appointment) cannot be called in question in any court *i e*, no suit or proceeding will lie in any court challenging the orders of such appointment or cancellation made by the Central Government

52F If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Penalty for withholding documents or property from Administrator

Note

The following acts have been made penal under this section, *viz*, (1) failure to deliver to the Administrator any books of account, registers or any other document in the custody of any director or officer of the insurer or any other person, and (2) retaining by any such person of any property of the insurer The maximum punishment prescribed under this section is imprisonment for six months and fine of Rs 1,000 or both [1]

52G (1) No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of section 52A, section 52B, section 52BB or section 52C

Protection of action taken under sections 52A to 52C

(2) No suit or other legal proceeding shall lie against the Central Government or the Controller for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B or section 52D

Note

This section saves the action of the Administrator, the Controller and the Central Government for doing anything or intended to be done in good faith in pursuance of the powers and duties respectively imposed on them in sections 52A 52B 52BB 52C and 52D No suit or other legal proceedings shall lie against them Even the prosecution of the Administrator in doing

[1] See S 249 (3) of the Companies Act 1956 for failure to produce those papers to the Inspector

anything in good faith in pursuance of his powers and duties imposed under sections 52A, 52B, 52BB and 52C has been barred

WINDING UP

53 (1) The Court may order the winding up in accordance with the Indian Companies Act, 1913, of any insurance company and the provisions of this Act apply accordingly

Winding up by the Court

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of an insurance company—

(*a*) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy-holders holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees , or

(*b*) if the Controller who is hereby authorised to do so applies in this behalf to the Court on any of the following grounds, namely,—

(*i*) that the company has failed to deposit or to keep deposited with the Reserve Bank of India the amount required by section 7 or section 98,

(*ii*) that the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Controller,

(*iii*) that it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent, or

(*iv*) that the continuance of the company is prejudicial to the interests of the policy holders

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Grounds for winding up*
4 *Inability to pay debts*
5 *Suspension of business for a whole year*
6 *The "just and equitable" clause*
7 *Persons competent to apply to court for winding up order*
8 *Foreign companies or unregistered associations, winding up*

THE INSURANCE ACT

1 Legislative changes—(a) The word "Act" occurring in sub-section (1) was substituted for the word "Chapter" by Act XIII of 1941

(b) The word "Controller" occurring in the section was substituted by Act XLVII of 1950

(c) The words and figures "or section 98" occurring in sub-section (2) (b) were inserted by Act XI of 1939, and

(d) The words "or having contravened any provision of the Act has continued such contravention" were inserted by Act XIII of 1941

2 Object and scope—A company when incorporated under the Companies Act can neither be dissolved nor can put an end to its corporate existence except through the machinery of winding up or its name can be removed from the register as a defunct company under section 560 of the Companies Act, 1956 [1] The object of this section is to provide one such machinery by which an insurance company can put an end to its corporate existence

Ordinarily the words "winding up a company" mean arranging its affairs and dissolving it, but in legal parlance the words mean the legal process by which the dissolution of a company is brought about when its assets realised are applied in payment of its debts and thereafter the balance remaining is paid back to the shareholders in proportion of their contributions to the capital of the company Under the Companies Act, 1956 (which repealed the Indian Companies Act, 1913) three methods of the winding up of a company have been provided, namely, (a) by the court, or (b) voluntary, or (c) subject to the supervision of the court [section 425 (1), Companies Act, 1956] A voluntary winding up may be sub-divided into two clauses thus, (i) members' voluntary winding up, and (ii) creditors' voluntary winding up

This section provides for the winding up of any insurance company by the court and it further provides that the provisions contained in the Companies Act for winding up of a company shall apply to the winding up of an insurance company subject to the provisions contained in the Insurance Act Further, sub-section (2) enumerates other grounds other than those mentioned in section 433 of the Companies Act on which the court can order the winding up of an insurance company

3 Grounds for winding up—Under the Companies Act, 1956, a company may be wound up by the court if one or several of the following grounds for winding up are present (section 433)

(a) the company has by special resolution resolved that the company be wound up by the court

(b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting,

(c) the company does not commence its business within a year from its incorporation, or suspends its business for a whole year

(d) the number of members is reduced, in case of a public company, below seven, and in the case of a private company, below two,

(e) the company is unable to pay its debts

(f) the court is of opinion that it is just and equitable that the company should be wound up

1 *Princess of Reuss v Bos* (1871) L. R. 5 H L. 176 at p 193

Besides the above grounds which are also available for the winding up of an insurance company, it may be wound up by the court if one or several of the following grounds for winding up are present—

(*a*) the company has failed to deposit or to keep deposited with the Reserve Bank of India the amounts required by section 7 or section 98 of this Act ,

(*b*) the company having failed to comply with any requirement of this Act has continued such failure or having contravened any provision of this Act has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Controller ,

(*c*) it appears from the returns furnished under the provisions of this Act or from the results of any investigation made thereunder that the company is insolvent ,

(*d*) the continuance of the company is prejudicial to the interest of the policy holders

The above grounds under this section of the Act are available only to the Controller when he applies to the court for the winding up of the company

In U K an insurance company to which the Insurance Companies Act, 1958 applies (not being a company registered or having its head office in Northern Ireland) may be wound up by the Court in accordance with the Companies Act 1948, and the grounds available under the latter Act which are identical with the grounds under section 433 of the Companies Act, 1956, are also available to the insurance companies under the Insurance Companies Act, 1958 But where a petition for the winding up is presented by the Board of Trade the following grounds are available to the Board

(*a*) that the company is unable to pay its debts within the meaning of sections 222 and 223 of the said Act of 1948 , or

(*b*) that, an inspector having been appointed to investigate the affairs of the company under section 14 of the Insurance Companies Act, 1958, any such refusal has taken place as, under subsection (3) of section 167 of the said Act of 1948, as applied by the said section 14, is or might be made the ground of the punishment of an officer or agent of the company [1]

4 **Inability to pay debts** —Under section 434 of the Companies Act, 1956, a company shall be deemed to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding Rs 500 then due, has served on the company at its registered office by registered post or otherwise, a demand under his hand requiring it to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor , or

(*b*) if execution or other process is issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part , or

(*c*) if it is proved to the satisfaction of the court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts, the court shall take into acco contingent and prospective liabilities of the company

1 S 15 of the Insurance Companies Act, 1958

A petition for winding up with a view to enforcing payment of a disputed debt is an abuse of the process of the Court But if it is shown that the alleged dispute is not a *bona fide* one, the objection to the petition fails The mere fact that an appeal is pending does not prevent the judgment debt from being mad the foundation of a winding up petition unless stay of execution of the decree is obtained pending the disposal of the appeal So also, the mere fact that the company has put forward a claim against the decree-holder and the claim is pending adjudication by the court, does not make the claim based on the judgment-debt which arises out of a decree passed after contest a disputed debt [2] The expression "unable to pay its debts" has been construed to mean in a commercial sense that the company is unable to meet its current demands although it may have large assets [3] But the court will not hear a defence when it says "We are able to pay our debts, but we do not choose to pay this particular debt" [4]

An insurance company carrying on general business, under the Insurance Companies Act, 1958, shall be deemed to be unable to pay its debts if the value of its assets does not exceed the amount of its liabilities by which-ever is the greater of the following amounts, namely,—

(a) fifty thousand pounds, or

(b) one tenth of the general premium income of the company in its last preceding financial year [5]

In U S A an insurance company is deemed to be insolvent when there is a general inability to meet pecuniary liabilities as they mature by means of either available assets or use of credit Liabilities of the company to be considered in determining its solvency include all pending claims for losses although disputed by the company But the premium reserve is no test of the company's actual solvency [6]

5 **Suspension of business for a whole year** —A company cannot be said to have suspended its business for a whole year if it ceases to be active in its field of operations but becomes a holding company holding shares in other companies engaged in the active pursuit of the objects for which it was incorporated [7]

6 **The "just and equitable" clause** —Where the main business of the company was taken over by the Government and there was no chance of carrying out its other objects, the order to winding up the company was held just and equitable [8] So also where the facts justify an order for dissolution of a partnership they would equally justify the making of a winding up order in the case of a small private company within just and equitable clause [9] Similarly, where continued existence of the company with a Board

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1 Syed Murtuza Ali Khan v Sl ested Concrete Constructions (P) Ltd 1960 Mad 234 see Bukhtarpur Bihar Light Rly Co Ltd v Union of India 1953 Cal 499

2 Hill Mines (1883) 23 Ch D 210 Re Gold

3 Sarkar Estates (P) Ltd v Kusumika Iron Works (P) Ltd 1961 Cal 439 Tripura Administration v Tripura State Bank Ltd 1959 Tripura 41

4 See Re A Company (May 16 1950) 1 C L C No 1406 94 S J 369 quoted in Palmer's Company Law 20th Ed p 697

5 S 13 (1) of the said Act.

6 See 44 C J S pp 688-690

7 Re Eastern Telegraph Co (1947) 2 All E R 104

8 Nageswara Rao v Rajahmundry Electric Corporation Ltd 1957 Andh L T 778 A R Aiyar v East Coast Transport etc Co (P) Ltd I L R (1957) Andhra 908 In re Bilatrol Jubar nal 1962 Bom 131 see also Re Davis and Collet Ltd (1935) Ch 693 Rayfield v Hands (1958) 2 W L R 851 the principle was applied in the following cases Re Eastern Telegraph Co (1947) 2 All E R 104 Re Merchant Navy Supply Assurance Ltd (1947)

of Directors benefits a group of shareholders while others derive no benefit therefrom, it was just and equitable that the company should be wound up [1] So also where mismanagement prevails without any practical possibility of remedying it, winding up may be ordered on the just and equitable ground [2] The words just and equitable' should not be construed *ejusdem generis* [3]

But the fact that the directors have misappropriated or misconducted themselves is no ground for winding up [4], nor the fact that the majority of shareholders desires such winding up [5] So also a company cannot be wound up merely because it is running at loss,[6] or where there is another remedy to have the matters complained of rectified,[7] or because the company is doing unauthorised business or entering into *ultra vires* transactions,[8] or because the directors holding half the shares refused to register as members the executors of a deceased shareholder who held the other half [9]

7 Persons competent to apply for winding up order to Court — Under section 439 of the Companies Act, 1956, persons competent to file a winding-up petition to the court are—

(*a*) the company,[10]

(*b*) any creditor or creditors including any contingent or prospective creditor or creditors, a secured creditor, the holder of any debentures and the trustee for the holders of debentures,[11]

(*c*) any contributory or contributories irrespective of whether he they or be are holder or holders of fully paid-up shares or the company may have no assets at all, or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, but he or they shall not be entitled to file a petition for winding up a company unless—

(i) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two, or

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W N 154 *O P Batra* v *K C Uton and General Mills Co Ltd* 1962 Punj 151 where the substratum of a company was gone *Re London and County Coal Co* (1867) L R 3 Eq 355 where the company was a bubble *Re Peruvian Amazon Co*, (1913) 22 T L R 384 where full investigation was necessary, *Re Tendjo Tobacco Co* (1916) 2 Ch 426 where there was a complete deadlock, applied in the Canadian case of *Re National Drive in Theatres* (1954) 2 D L R 55 *In re H C Insurance Society Ltd* 65 C W N 68 where its only business had become impossible

1 *Lawang Tshang* v *Goenka Commercial Bank Ltd* 64 C W N 828

2 *Rajahmundry Electric Supply Corporation Ltd* v *Nageswara Rao* 1956 S C 213

3 *A R Aiyar* v *East Coast Transport, etc Co (P) Ltd* 1 L R (1957) Andhra 308 *see* also *Davis* v *Brunswick* 1936 P C 114

4 *Lawang Tshang* v *Goenka Commercial Bank Ltd* 64 C W N 828

5 See *Re Anglo-Constitutional Produce Co Ltd* (1939) 1 All E R 99

6. *Davis and Co Ltd*, (1936) 1 All E. R 299

7 *Re Professional etc Building Society* (1891) 6 Ch 856

8 *Mohanlal* v *Grain Chamber Ltd* 1959 All 276

9 *Re Cuthbert Cooper & Sons Ltd*, (1937) Ch 392 [1] *Saw Mills and Industries Ltd In re* 1 L R (1961) 1 Ker 319 1962 Ker 148, *Lalita Rajya Lakshmi* v *Indian Motor Co etc Ltd* 66 C W N 63

10 See *State of Madras* v *Electric Tramways Ltd* (1955) 2 M L J 640

11 See *Ram Kumar* v *Buxar Oil and Rice Mills* 1960 Cal 764 *Re Ko Ku Lo Ltd* 57 C W N 136 1953 Cal 387 *Bengal Laxmi Cotton Mills Ltd* v *Mahalaxmi Cotton Mills* 58 C W N 689 1955 Cal 273 *Mumtaza Ali Khan* v *Stressed Concrete Construction (P) Ltd* 1960 Mad 254 *Re A B C Coupler and Engineering Co Ltd* (1961) 1 All E R 354 *Re P and J Macrae Ltd* (1961) 1 All E R 304 *Karnataka Vegetable Oils and Refineries Ltd* v *Madras Industrial Investment Corporation* (1954) 2 M L J 467 1955 Mad 592 for costs see *Re R W Sharman Ltd* (1957) 1 All E. R. 737

(ii) the shares in respect of which he/they is/are a contributor or contributories, or some of them, either were originally allotted to him/them or have been held by him/them, and registered in his/their name/names, for at least six months during the eighteen months immediately before the commencement of the winding up, or have devolved on him/them through the death of a former holder/holders, or

Petition by a contributory for winding up is rare, in any case he shall have to make out a special case [1] When the majority show confidence the court does not interfere [2] So also where a voluntary winding up is in progress a contributory's petition is not entertained [3] The case usually made out by a contributory is that it is just and equitable that the company shall be wound up because the substratum of the company is gone Again, sometimes "a contributory petitions on the ground that the company is insolvent or unable to pay its debts, but in such case the petitioner, if fully paid, should, if possible, allege and prove that there will be a substantial surplus for the shareholders" [4]

(d) all or any of the parties mentioned in (a), (b) and (c) above, whether together, or severally jointly or separately, or

(e) the Registrar,

(i) if authorised by the Central Government in that behalf, or

(ii) *suo motu* on the grounds specified in clauses (b), (c), (d) (e) and (f) of section 433 but not on the ground specified in clause (e) unless it appears to him either from the financial condition of the company as disclosed in its balance-sheet or from the report of a special auditor appointed under section 233-A or an inspector appointed under section 235 or 237, that the company is unable to pay its debts Provided further he shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid, or

(f) any person authorised by the Central Government in that behalf in a case falling under section 243 or in a case falling under section 440,

(g) the official liquidators, where the company is being wound up voluntarily or subject to the supervision of the Court (section 440)

Besides the persons aforementioned who are competent to file winding up petition in Court under the Companies Act, 1956, the following persons are also competent to file a winding-up petition in Court under this section of the Insurance Act—

(a) shareholders not less in number than one-tenth of the whole body of shareholders and holding not less than one tenth of the whole share capital with the sanction of the Court previously obtained or

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1 *Re Gutta Percha Corporation* (1900) 2 Ch 665
2 *Cine Industries and Recording Co* 44 Bom 431
3 *Re National Company for Distribution of Electricity* (1902) 2 Ch, 230 *see also Re Langham Skating Rink* (1877) 5 Ch D 669
4 Palmer's Company Law 20th Ed p 702

(*b*) policy holders not less than fifty in number and holding policies of life insurance that have been in force for not less than three years and are of the total value of not less than fifty thousand rupees with the sanction of the Court previously obtained , or

(*c*) the Controller when authorised to file such petition under the Act on any of the grounds mentioned in sub clauses (i) to (*iv*) of clause (*b*) of sub-section (2) of this section [1]

The Controller is authorised to move the Court for a winding up order of insurance companies under sub-section (3-D) of section 3 and clause (*d*) of sub section (4) of section 33 of the Act [2]

8 **Foreign companies, or unregistered association, winding up** — Companies registered under the Companies Act, 1956 or under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882 or under the Indian Companies Act, 1866 or under any Act repealed thereby, can be wound up under the provisions of the Companies Act 1956 But an insurer, as defined in sub section (9) of section 2 of the Act includes *inter alia* companies incorporated under the Companies Act or under the law of any country other than India and unincorporated body of individuals Part X of the Companies Act, 1956 provides winding up of unregistered companies which shall not include (i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom , (ii) a company registered under the Companies Act, 1956, or (iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India or in the State of Jammu and Kashmir immediately before the 26th January 1950 , but shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding-up the partnership, association or company, as the case may be, is presented before the Court (section 582) An unregistered company within the definition aforesaid may be wound up under section 583 of the Companies Act, 1956

Section 584 of the said Act further provides 'where a body corporate incorporated outside India which has been carrying on business in India ceases to carry on business in India, it may be wound up as an unregistered company under this part (Part X) notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such or by virtue of the laws of the company under which it was incorporated "

For the winding up of a foreign company it is not necessary that it should have its registered office within the jurisdiction of the Court, it is enough for the purpose if it is shown that it has an office and assets and liabilities within the jurisdiction of that Court [3] After a winding up order is made, the liquidator has to deal with the entire body of creditors without making any distinction as regards the location of the debts [4]

9 **Court where petition for winding up to be made** —A petition for winding up of an insurance company can be made to a Court as defined in sub-section (6) of section 2 of the Act, i e , such petition can be presented

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1 *See* Notes 3 *supra*

2 *See* Notes under those sections

3 *In the matter of Calcutta Jute Mills Ltd* 5 Cal 888 *et* also) *In re Mercantile Bank of Australia* (1892) 2 Ch 204 *see* also *Bank de Moscow* v *Anderdey* (1950) 2 All E R 549 , *North Australian Co* v *Goldbrough Co* (1893) 61 L T 716 *Re Tovarishestvo etc* (1944) 2 All E R 556 *Re Vaudeloose, etc* (1946) Ch 93 *Re Russian Commercial and Industrial Bank* (1955) 1 All E R 75

4 *Raja of Vizianagaram* v *Official Liquidator*, 1951 M L J 535 1952 Mad 136

to the principal Civil Court of original jurisdiction in a district where that Court has jurisdiction over the company or the High Court, where the company is situated within its ordinary original civil jurisdiction where the District Court has jurisdiction, it can deal with all matters arising in the winding, although the amount involved in any matter may exceed its pecuniary limits [1]

But under the Companies Act, 1956, the High Court has been given certain powers with regard to the proceedings in winding up Thus the High Court has the following powers, namely,—

(*a*) to transfer all subsequent proceedings in a case where it has passed a winding up order, not only to a District Court subordinate to it, but to any other High Court or District Court subordinate to that High Court with its consent, this power should not be construed to mean that it can transfer petition for winding up for disposal by any other Court (section 435),

(*b*) to withdraw the case during the progress of a winding up in a District Court and proceed with the winding-up itself or to transfer the case to such other District Court (section 436),

(*c*) to retain winding-up proceedings in the District Court, although that District Court may not be the Court in which the winding up proceeding ought to have been commenced (section 437), and

(*d*) to pass orders as above at any time and at any stage and either on the application of or without application from, any of the parties to the proceedings (section 438)

53A Notwithstanding anything contained in any other law, in ascertaining for any purpose of this Act, the solvency or otherwise of an insurer, no account shall be taken of any assets consisting of unpaid up share capital

Unpaid up share capital

Note

This section was inserted by Act VI of 1946

This section purports to overrule the decision in *New State of India Insurance Co Ltd* v *Superintendent of Insurance* [2] Where the uncalled capital of the insurance company was over four lakhs of rupees and the list of shareholders of the company indicated that several of them were men of substance and that the deficit could easily be realisad from a few of them, in the circumstances the company was not regarded as insolvent. The *ratio decidendi* of that case is that in judging the financial position of an insurance company at a given moment to the creditors at its face value, it is equally wrong to leave it out of consideration altogether, regardless of the position and solvency of the shareholders On the one hand, allowance must be made for the fact that some of the shareholders may not be able to meet the call when made, and those who have the means may not be willing to pay too readily, on the other hand, it cannot be assumed that

1 *See Re F and E Stenson Ltd* (1928) 1 K. B. 464.

2. 1 L. R. (1944) Lah. 47 1943 Lah 109.

not a single pie out of this large sum can be taken to be available for meeting the contingent liability of the policy-holders

This section now expressly lays down that in ascertaining the solvency of an insurer for whatever purposes under the Act and irrespective of whether there is any other law to the contrary, no account shall be taken of any assets of the insurer consisting of unpaid up share capital So in ascertaining his solvency the amount due on the shares not paid up should not be taken into account

Ordinarily, in determining the solvency of a company, it is improper to consider its unavailable or uncollected assets or dues or its goodwill or securities or properties purchased but not paid for, or a guaranty fund obtained from stock holders for the purpose of paying claims in case the company's resources should be exhausted and to be refunded to the stock-holders out of future surplus earnings if it should be so used [1]

Voluntary winding up

54 Notwithstanding anything contained in the Indian Companies Act, 1913, an insurance company shall not be wound up voluntarily except for the purpose of effecting an amalgamation or a re-construction of the company, or on the ground that by reason of its liabilities it cannot continue its business

SYNOPSIS

1 *Object and scope*
2 *Voluntary winding-up, circumstances of*
3 *Commencement of voluntary winding up*
4 *Voluntary winding up vis a vis compulsory winding up*

1 Object and scope —The object of this section is to prohibit to an insurance company from being wound up voluntarily except for the purposes of amalgamation or reconstruction which must be effected on the ground that by reason of its liabilities it cannot continue its business

The section lays down an exception to what has been laid down in Chapter III of the Companies Act, 1956, providing for voluntary winding-up of companies But the provisions of that Chapter will come into play only when an amalgamation or a re-construction of the company has to be effected on the ground of its being unable to continue its business because of its liabilities

2 Voluntary winding up circumstances of —Under the Companies Act, 1956, a company may be wound up voluntarily—

(*a*) when the period, if any, fixed for the duration of the company by the Articles has expired or the event, if any, has occurred, on the occurrence of which the Articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily,

(*b*) if the company passes a special resolution that the company be wound up voluntarily [2]

The above method of winding-up is what is known as a members winding up , but there is another method of a voluntary winding-up which is known as a creditors' winding up [3]

1 *See* 44 C J S pp 689-690
2 S 484, *see* S 203 of the Act of 1913 and S 278 of the English Act
3 *See* Ss 499 and 500 of

The essential difference between the aforesaid two methods of voluntary winding-up is that a winding up in the case of which a declaration has been made and delivered in accordance with section 488 of the Companies Act 1956, is in that Act referred to as 'a members' voluntary winding up" and winding up in the case of which a declaration has not been so made and delivered is in that Act referred to as a "creditors' voluntary winding up"[1]

3 **Commencement of voluntary winding up its effect**—A voluntary winding-up shall be deemed to commence at the time when the resolution for voluntary winding up is passed (section 486) As from that date the company is to cease to carry on its business except so far as may be required for the beneficial winding up of such business but even after that date the corporate state and corporate powers of the company shall continue until it is dissolved (section 487) Even where a voluntary winding up is continued under the supervision of the court under section 522 of the Act the winding-up commences from the date of the resolution and not from the date of the presentation of the petition[2] When a liquidator is appointed the directors powers are to cease He can be appointed as soon as the resolution for winding up has been passed, even without notice[3] The liquidator is treated as a person in the position of an agent for the company, performing his duties in accordance with the provisions of the Act[4] The passing of a resolution for voluntary winding up does not operate as notice of discharge to the employees of the company if the business is continued by the liquidator or the liquidation is for the purpose of a reconstruction[5]

4 **Voluntary winding up vis a-vis compulsory winding up**—At any time after a company has passed a resolution for voluntary winding up the court may make an order that the same shall continue but subject to such supervision of the court and with such liberty for creditors, contributories or others to apply to the court and generally on such terms and conditions, as the court thinks just (section 522), but the passing of a resolution for voluntary winding up with the knowledge of a compulsory winding up pending would be a contempt of court[6]

Valuation of liabilities

55 (1) In the winding-up of an insurance company or in the insolvency of any other insurer the value of the assets and the liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator or receiver in insolvency thinks fit, subject, so far as applicable, to the rule contained in the Seventh Schedule and to any directions which may be given by the court

(2) For the purposes of any reduction by the Court of the amount of the contracts of any insurance company the value of the assets and liabilities of the company and all claims in respect of policies issued by it shall be ascertained in such manner and upon such basis as the court thinks proper having regard to the rule aforesaid

1 S 488 (5) of the said Act
2 *See Re West Cumberland Iron and Steel Co* (1888) 40 Ch D 361
3 *British v French Tubeless Tyre Co*, (1900) 1 Ch 408
4 *Equitable v Scott*, (1891) 1 Ch 717, *Pulsford v Devenish* (1903) Ch 625
5 *Reigate v Union Manufacturing Co* (1918) 1 K B 592
6 *In re Septimus Parsonage and Co*, (1901) 2 Ch 424

(3) The rule in the Seventh Schedule shall be of the same force and may be repealed, altered or amended as if it were a rule made in pursuance of section 246 of the Indian Companies Act, 1913, and rules may be made under this section for the purpose of carrying into effect the provisions of this Act with respect to the winding up of insurance companies

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Appointment of liquidator or receiver in insolvency*
4 *Value of the assets and liabilities how to be ascertained, sub section (1)*
5 *Reduction of the amount of the contracts by court, procedure, sub-section (2)*
6 *Rule of the Seventh Schedule, its modification, repeal or alteration and its force, sub-section (3)*

1 **Legislative changes** —The words "Seventh Schedule" occurring in sub-sections (2) and (3) of this section were substituted by Act XLVII of 1950

2 **Object and scope** —The object of the section is to confer power on the liquidator in case of winding up, when the insurer is a company, and on the insurer in insolvency, when the insurer is an individual, to ascertain the value of the assets and the liabilities of the insurer The ascertainment of such value and of the liabilities has been left to the discretion of the liquidator and the receiver, as the case may be, but they are to follow, in doing so, the rule in the Seventh Schedule and the directions of the court in this regard

The section also confers absolute discretion on the court, when adjudicating on the winding-up petition or the insolvency petition, as the case may be, to ascertain the value of the assets and liabilities of the company and all claims in respect of policies issued by it when it proposes to reduce the amount of contracts of the company in the said proceedings Although the court has the discretion to follow the rule in the Seventh Schedule in ascertaining same but its discretion in this regard is not in any way fettered by the said rule in the said Schedule

3 **Appointment of liquidator or receiver in insolvency** —When a winding-up order is made with regard to a company, the official liquidator is to become its liquidator by virtue of his office (section 449) He is appointed by the Central Government as a whole time officer and is attached to each High Court In respect of a District Court, the official receiver for insolvency purposes attached to that court is to be the official liquidator, but where there is no such official receiver, a person appointed by the Central Government by notification in the official Gazette is to be the official liquidator The Central Government has also the power to appoint one or more Deputy, Assistant or part-time official liquidator (section 448)

The Court has the power to appoint the official liquidator as provisional liquidator at any time after the presentation of a winding up petition and before the making of a winding up order On the winding-up order being made by the court the appointment of official liquidator as a provisional liquidator is to cease and he is to become the official liquidator (section 450) The Court has also the power to direct that there is to be appointed a

of inspectors to act with the liquidator Such an order can be given at the time of making an order for the winding up or at any time thereafter (section 464)

The liquidator's principal duties are, (*i*) to take possession of and protect the assets, (*ii*) to make out the requiste lists of contributories and of creditors, (*iii*) to have disputed cases adjudicated upon, (*iv*) to realise the assets subject to the control of the committee of inspection (if any) in certain matters, (*v*) to apply the proceeds in payment of the company's debts and liabilities, and having done so (*vi*) to divide the surplus amongst the contributories and to adjust their rights But before he makes such distribution he should be careful in ascertaining either by advertisement or by sending individual notice to creditors if they have any claims against the company [1] His action in this regard would not be justified if he only relies on advertisements [2] He should also provide, before such distribution, for income-tax due to the Government.[3]

Besides the above the liquidator has also certain statutory powers which are specified in section 457 of the Companies Act, 1956 Although section 457 (section 179 of the previous Act, 1913) deals with the powers of the liquidators to institute or defend proceedings with the sanction of the Court and section 545 (section 237 of the previous Act) deals with the power of the Court to give direction for prosecution of delinquent directors, etc, yet neither of the two sections indicates that if the liquidator takes action without a direction of the Court the action would be illegal or invalid or it would invalidate a prosecution [4]

Any person who is *sui juris* and not *non compos mentes* or any body of persons called a "firm" can take the protection of insolvency law either under the Provincial Insolvency Act (V of 1920) or under the Presidency Towns Insolvency Act (III of 1909) when they find that they are no longer in a position to pay their dues to their creditors Sections 6 and 9 respectively of the Provincial Insolvency Act and the Presidency Towns Insolvency Act lay down the acts of insolvency Section 57 of the Provincial Insolvency Act empowers the State Government to appoint such persons as it thinks fit (to be called "official receivers") to be receivers under that Act within such local limits as it may prescribe Such official receiver is to be the receiver for the purpose of every order appointing a receiver or an *interim* receiver issued by the Court (for corresponding provisions in the Presidency Towns Insolvency Act *see* S 81 of that Act) The powers and duties of the receiver under the Act have been laid down in section 59 Section 68 Presidency Towns Insolvency Act, besides section 80 of the Provincial Act, empowers the High Court to delegate certain powers to the official receivers Such powers include the following

(*i*) to frame schedule and to admit or reject proofs of creditors,

(*ii*) to make *interim* orders in any case of urgency, and

(*iii*) to hear and determine any unopposed or *ex parte* application

4 **Value of the assets and liabilities, how to be ascertained**, sub-section (1) —Sub-section (1) confers direction on the liquidator or the receiver, as the case may be, to ascertain the value of the assets and the

1 *Pulsford v Devenish* (1903) 2 Ch 625
2 *Re Armstrong Whitworth Securities Ltd* (1947) Ch 673
3 *Re New Zealand Joint Stock Corporation* (1907) 23 T L R 533 *see* Palmer's Company Law 20th Ed p 69
4 *Dr Satendra Nath v Jatindra* 1959 S C R 1263 : 1959 S C J 205 : 1959 S C 511 *see also Jamnadas Manilal v State of Bombay*, 1956 S C R 488 : 1956 S C 575.

liabilities of the insurer in such manner and upon such basis as he thinks fit, but in so ascertaining, it has been laid down in the said sub section by way of recommendation that he can conform, so far as applicable, to the rule contained in the Seventh Schedule to the Act and further he must conform to the directions (if any) which may be given to him in this regard by the Court

The rule provided in the Seventh Schedule to the Act is as follows :

(*a*) The liabilities of an insurer in respect of current contracts effected in the course of life insurance business including annuity business shall be calculated by the method and upon the basis to be determined by an actuary approved by the Court and in determining same the said actuary is to take into account—

(i) the purpose for which such valuation is to be made,

(ii) the rate of interest and the rates of mortality and sickness to be used in valuation, and

(iii) any special directions which may be given by the Court

(*b*) The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid

Under the English Act, the valuation of liabilities of an insurance company on winding up is governed by rules set out in the Third Schedule to the Insurance Companies Act, 1958 For the purposes of valuation the rule therein divides the policies into (*i*) life policies, (*ii*) annuities, (*iii*) bond investment policies, (*iv*) fire, accident, motor vehicle, marine, aviation and transit policies, and (*v*) employer's liability policies The general schedule of valuation in the Third Schedule of the English Act seems to be more or less akin to the scheme laid down in the Seventh Schedule to our Act In the schedule to the English Act the scheme is that life policies and annuities are to be valued actuarially according to such rate of interest and tables of mortality as the Court may direct, and other policies, such as fire, marine, etc , are to be valued at that portion of the last premium as is proportionate of the period in respect of which it was paid

But the policies and annuities which are not covered by the Insurance Companies Act, 1958, are to be valued according to section 316 of the Companies Act, 1948, which means that the full amount of the claim arising under a policy before winding up is complete or annuity instalment still unpaid under an annuity where annuitant dies before his proof is dealt with, would be recoverable and not the actuarial value of the policy or annuity at the time when the company goes into liquidation [1] Again where no claim arises nothing would be recoverable because premiums are not apportionable and the assured is not entitled to a return of the portion of their attribution to the period of winding up [2]

It has already been noticed that a winding up by order of the Court is deemed to commence when the petition was presented to Court but the valuation of policies is to be made as at the date of the winding-up order [3] Hence it follows that the assured may prove for losses which occurred in between the presentation of petition and the making of the order [4]

1 *Re Northern Counties Fire Macfarlane's claim* (1880) 17 Ch D 337, *Re Profits Insurance* (1929) 1 Ch 262.

2. *Re Northern Counties Fire*, (1885) 1 T L R 629

3 *Re Law Car and General, Ring's* 2 Ch 103

4 *Sovereign Life v Dodd*,

A policy-holder is entitled to set off the value of his policy in full against any debt he owes to the company on its winding up[1] Hence, companies having mutual reinsurance dealings will have the right to prove for, or be liable to pay, only the balance of the account outstanding between them[2]

5 **Reduction of the amount of contract by court, procedure, sub-section (2)**—Sub-section (2) lays down that the value of the assets and liabilities of the company and all claims in respect of policies issued by it have to be ascertained according as the Court thinks proper in such manner and upon such basis as per its discretion but regard should be given to the rule of the Seventh Schedule to the Act when the Court proceeds to reduce the amount of contracts of any insurance company

Where the scheme involves the reduction of policy contracts, the value of the liabilities of the company and of all claims in respect of the policies issued by it is to be ascertained by Court having regard to the rule contained in Schedule VII The nominal value is not the real value Consequently, where the majority who voted for a resolution sanctioning the scheme represented three fourths of the nominal value of the policies, the resolution cannot be said to have been passed by the majority as contemplated by section 153 (2) of the Companies Act, 1913[3] In same case it has also been said that the policy-holders whose policies have ripened and whose policies have not ripened belong to different classes and hence summoning of a joint meeting of all these policy holders is not proper

Under the English Insurance Companies Act, 1958, the Court is empowered to reduce the contracts or terms of an insurance company where it is unable to pay its debts instead of making a winding-up order (section 18 of the said Act) The provisions of this section are generally applied where a company could be wound up under section 13 of that Act owing to insufficient margin of solvency but the provisions of section 18 could not be invoked to enable an insurance company to take on any fresh business and a scheme which proceeds upon a principle of inequality of reduction is not within the Act[4] Companies outside the scope of the Insurance Act, e.g. mortgage guarantee companies, cannot take advantage of the provision

6 **Rule of the Seventh Schedule, its modifications, alterations, repeal and its force, sub-section (3)**—Sub-section (3) lays down that the rule contained in the Seventh Schedule to this Act is to be of the same force and can be repealed altered or amended as if it were a rule more in pursuance of section 246 of the Indian Companies Act, 1913 It has further been laid down in this sub-section that the rules may be made under the said section of the Companies Act for the purpose of carrying into effect the provisions of the Insurance Act with respect to the winding up of insurance companies

Section 246 of the Indian Companies Act, 1913, as amended by the Indian Companies Act (Amendment) Act, 1936, "not only requires the High Courts to make rules relating to the winding up of companies but also empowers them to make rules for other purposes specifically mentioned in this section

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1. *Sovereign Life v Dodd* (1892) 2 Q. B 573; *Re National Benefit* (1924) 2 Ch 333; *Re City Life* (1927) Ch 191 contra: *Re Londonia* (1871) L. R. 10 Ch. 484; *Re City Equitable Fire* (1930) 2 Ch. 293.
2. *Re City Equitable Fire* (1930) 2 Ch. 293.
3. *Light of Asia Insurance Co Ltd v Saunders Nath Mitra* 1 L. R (1914) 2 Cal. 85; 46 C. W. N 441; 1912 Cal 578
4. *Re Nelson* (1905) 1 Ch 551; *Re North and South* (1933) 47 T. L. R. 556.

and also generally for all applications to be made to the court, under the provisions of the Act These rules are now framed by the High Courts, and although they are generally based on the English winding up in the different High Courts rules, we are told that the divergence of practice in the different High Courts had resulted in much avoidable confusion and difficulty We, therefore, recommend that, as soon as Government have formulated their decision on our recommendations relating to the amendment of the Indian Companies Act, they should take up this matter with the Supreme Court of India, with a view to evolving a set of uniform windings rules in consultation with the High Courts After such rules have been framed, it would be for the respective High Courts to consider as to what extent they can be applied to District Courts under their supervision and control "[1]

Section 246 of the Indian Companies Act, 1913, is now repealed and on the recommendations of the Company Law Commission, section 643 found place in the Companies Act, 1956, whereby, the Supreme Court to make rules after consulting the High Courts, providing for all matters relating to the winding up of the companies which by the Companies Act, 1956, are to be prescribed Thus, the Supreme Court has powers to make rules consistent with the Code of Civil Procedure (V of 1908)—

(i) as to the mode of proceedings to be had for winding up a company in High Courts and in courts subordinate thereto,

(ii) for the voluntary winding up of companies, whether by members or by creditors,

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 391,

(iv) for giving effect to the provisions of the Companies Act as to the reduction of capital, and

(v) generally for all applications to be made to the court under the provisions of the said Act.

By virtue of the said powers the Supreme Court, after consulting the High Courts, has made the rules known as the Companies (Court) Rules, 1959, which came into force on the first day of October, 1959 Part III of the said Rules provide the rules for winding up

Application of surplus assets of life insurance fund in liquidation or insolvency

56 (1) In the winding up of an insurance company and in the insolvency of any other insurer, the value of the assets and the liabilities of the insurer in respect of life insurance business shall be ascertained separately from the value of any other assets or any other liabilities of the insurer and no such assets shall be applied to the discharge of any liabilities other than those in respect of life insurance business except in so far as those assets exceed the liabilities in respect of life insurance business

(2) In the winding up of an insurance company carrying on the business of life insurance or in the insolvency of any other insurer carrying on such business where any proportion of

1 Report of the Company Law Commission para. 221

profits of the insurer was before the commencement of the winding up or insolvency allocated to policy-holders, if when the assets and liabilities of the insurer have been ascertained, there is found to be a surplus of assets over liabilities (hereinafter referred to as a *prima facie* surplus) there shall be added to the liabilities of the insurer in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is equivalent to such proportion of the profits allocated to shareholders and policy holders as was allocated to policy-holders during the ten years immediately preceding the commencement of the winding up and the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition :

Provided that—

(*a*) if in any case there has been no such allocation or if it appears to the Court that by reason of special circumstances it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the Court may direct, and

(*b*) for the purpose of the application of this sub-section to any case where before the commencement of the winding up or insolvency a proportion of such profits as aforesaid of a branch only of the life insurance business in question has been allocated to policy-holders the value of the assets and liabilities of the insurer in respect of that branch shall be separately ascertained in like manner as the value of his assets and liabilities in respect of the life insurance business was ascertained, and the surplus so found, if any, of assets over liabilities shall, for the purpose of determining the amount to be added to the liabilities of the insurer in respect of the life insurance business, be deemed to be the *prima facie* surplus

SYNOPSIS

1 *Object and scope*
2 *Value of assets and liabilities of life insurance business, determination of*
3 *Prima facie surplus, meaning of*
4 *Determination of value in case of prima facie surplus*
5 *Power of the Court*
6 *Value of assets and liabilities of a branch of life insurance business*
7 *Policy-holders vis a vis creditors in winding up*

1 **Object and scope** —The object of the section is to confer a privilege on the holders of life insurance policies in the matter of application of surplus assets of the life insurance fund in winding up or insolvency proceedings, as the case may be

This section is based, with certain modifications, on the recommendations of the Clauson Committee Clause 17 of the Bill of the said Committee runs *inter alia* as follows This clause works out, "in winding up, the principle that such separated fund is to secure to the policy-holders concerned not only the full satisfaction of their contract rights, but also (as against share holders and also holders of policies issued in other classes of business) that part of the unallocated surplus derived from their own class of business which belongs to them either by contract or in accordance with the practice of the the company" The difference between this section and the provisions in the said Bill is that in he former protection is given to the holders of life policies whereas in the latter such protection was recommended to be given to policy holders of every class of insurance business in respect of which a statutory fund was recommended to be maintained This section is to be read as a rider to the preceding section 55, i e after determining the value of assets and the liabilities under section 55, the application of the surplus assets of life insurance fund has to be made according to the provisions as contained in this section

2 **Value of assets and liabilities of life insurance business, determination of** —Sub-section (1) lays down that as a general rule the value of the assets and the liabilities of the insurer in winding-up or insolvency proceedings, as the case may be, has to be determined separately from the value of any other assets or any other liabilities of the said insurer Next, it lays down that in determining such value the assets of the life insurance business must not be applied to the discharge of any liabilities of any other business except the business of life insurance Lastly, it lays down that when the assets of the life insurance business exceed the liabilities of that business the excess could be applied to the discharge of liabilities of other business of the insurer

3 **Prima facie surplus, meaning of** —The expression "*prima facie* surplus" as stated in sub-section (2) means, in relation to the value of the assets and the liabilities of an insurer in winding up or insolvency, as the case may be, a surplus of assets over liabilities when it is determined without reference to any allocation made to policy-holders of any proportion of profits of the insurer before the commencement of the winding up or insolvency

The expression "*prima facie* surplus" as stated in proviso (*b*) of sub-section (2) also means the surplus, if any, of assets over liabilities where it is determined separately in respect of a branch only of the life insurance business without reference to any allocation made to policy-holders of any proportion of profits of that branch before the commencement of the winding up or insolvency, as the case may be

4 **Determination of value in case of prima facie surplus** —Sub-section (2) lays down that where there is found a *prima facie* surplus the determination of the value of the assets and the liabilities of the insurer must be made by adding to his liabilities in respect of the life insurance business an amount equal to such proportion of the *prima facie* surplus as is, equivalent to such portion of the profits allocated to shareholders and policy-holders as was allocated to policy holders during the ten years immediately preceding the commencement of the winding up and when this is done it is then only that

the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition In short, what this sub section lays down is that firstly, the surplus of assets over liabilities has to be allocated to the shareholders and policy-holders in the like proportion in which the profits were allocated to policy-holders during the ten years immediately preceding the commencement of the winding up or insolvency, and secondly, when a balance is found in the *prima facie* surplus after deducting therefrom the amount added to the liabilities of the insurer in respect of the life insurance business that the assets of the insurer shall be deemed to exceed his liabilities

5 Power of the Court—Proviso (*a*) to sub-section (2) confers discretionary power on the court to direct what amount of the surplus to be added to the liabilities of the insurer in respect of the life insurance business other than the amount to be so added as provided in sub-section (2) But the court should exercise its discretion in this regard o ily under the following circumstances

(*i*) Where there has been no such allocation, or

(*ii*) Where it appears to the court that by reason of special circumstances it would be inequitable that the amount to be so added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as mentioned in sub-section (2)

In either of the aforesaid two cases the court has been given the absolute discretion to depart from the method of valuation of the assets and liabilities of the insurer in respect of the life insurance business so as to arrive at a surplus or assets over liabilities as provided in sub-section (2)

6 Value of assets and liabilities of a branch of life insurance business—Proviso (*b*) to sub-section (2) lays down the procedure by which the value of the assets and liabilities of the insurer in respect of a branch only of the life insurance business has to be ascertained in winding up or insolvency, as the case may be

The value of his assets and liabilities of a branch of the life Insurance business has to be made just in the same manner as the valuation of his assets and liabilities of the life insurance business as laid down in sub-section (1) of this section, *i e* such valuation has to be ascertained separately from the value of any other assets or any other liabilities of the insurer of any other branch and no such assets shall be applied to the discharge of any liabilities other than the e in respect of the said branch except in so far as those assets exceed the liabilities in respect of the other branch

In this case too, there shall be added to liabilities of the insurer in respect of that branch of the business an amount equal to such proportion of the *prima facie* surplus (to be determined in accordance with the principle laid down in the proviso *see* Note 3, *supra*, as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy holders of that branch during the ten years immediately preceding the commencement of the winding up and thereupon the assets of the insurer of that branch shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition

7 Policy holders *vis-a vis* creditors in winding up—Generally any assets of the company may form part of the general assets whereof all the creditors of the company in winding up rank *pari passu*, but the creditors of

any branch of its business in respect of which a separate fund is required to be kept are not entitled to have allocated to that fund any part of the company's investments which could not be proved to have been purchased from the receipts of that branch of business [1] It is to be remembered that the policy holders have no priority over general creditors in respect of the same branch of business [2] But in respect of a separate fund the policy holders and creditors out of which they are to be paid have a preferential claim over other creditors on the fund [3] Again where the terms of the policies provide payment out of a named fund such policy-holders may be entitled to priority on that fund as secured creditors [4]

As a general rule a holder of a policy on which a claim has become payable cannot have any priority over other policy-holders of the same class,[5] but if his claim was paid before the winding up commenced this rule would have no application (see the above cases) Again, where the liability of the company is unlimited but the rights of the policy-holders are given to a fund the claims of others could not be met out of that fund but must be met by the members themselves [7] But when the special classes of policy holders could not be paid or met in full out of the said fund to which they have priority, the remainder of the assets must be divided rateably and without distinction between them and any other creditors [7]

When rights have been given specially to any class of insurance business it is important to know on winding up as to which specific class each contract of insurance falls, *e g* to decide whether endowment policies are to be classified as life policies [8]

Winding up of secondary companies

57 Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company

1 *Re London General Assurance* (1939) Ch 505
Aitchin v Coulthard (1942) 2 K B 228
2 *Glasgow Assurance (Liquidators of) v Welsh Insurance* 1914 S C 320
3 *Re Hearts of Oak Assurance* (1936) Ch 558
4 *Re British Imperial Insurance* (1878) 47 L J Ch 318 *Re International Life* (1876) 2 Ch D 476
5 *Re International Life* (1870) L R 5 Ch 424 *Re Teignmouth Mutual Shipping Association Re Martin's Claim*, (1872) L R Eq 148
6 *Re Arthur Average* (1876) 3 Ch D 522, *Re London Marine* (1869) L R 8 Eq 176 *Re Agricultural Cattle Insurance* (1874) L R 10 Ch 1, *Re State Fire* (1865) 34 L J Ch 436
7 *Re Nelson* (1907) 24 T L R 74, *Re Agricultural Cattle Insurance* (1874) L R 10 Ch 1
8 *Re National Standard Life*, (1918) 1 Ch 427

the assets of the insurer shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition In short, what this sub section lays down is that firstly, the surplus of assets over liabilities has to be allocated to the shareholders and policy-holders in the like proportion in which the profits were allocated to policy holders during the ten years immediately preceding the commencement of the winding up or insolvency, and secondly, when a balance is found in the *prima facie* surplus after deducting therefrom the amount added to the liabilities of the insurer in respect of the life insurance business that the assets of the insurer shall be deemed to exceed his liabilities

5 **Power of the Court**—Proviso (*a*) to sub-section (2) confers discretionary power on the court to direct what amount of the surplus to be added to the liabilities of the insurer in respect of the life insurance business other than the amount to be so added as provided in sub-section (2) But the court should exercise its discretion in this regard only under the following circumstances

(*i*) Where there has been no such allocation, or

(*ii*) Where it appears to the court that by reason of special circumstances it would be inequitable that the amount to be so added to the liabilities of the insurer in respect of the life insurance business should be an amount equal to such proportion as mentioned in sub-section (2)

In either of the aforesaid two cases the court has been given the absolute discretion to depart from the method of valuation of the assets and liabilities of the insurer in respect of the life insurance business so as to arrive at a surplus or assets over liabilities as provided in sub-section (2)

6 **Value of assets and liabilities of a branch of life insurance business**—Proviso (*b*) to sub section (2) lays down the procedure by which the value of the assets and liabilities of the insurer in respect of a branch only of the life insurance business has to be ascertained in winding up or insolvency, as the case may be

The value of his assets and liabilities of a branch of the life insurance business has to be made just in the same manner as the valuation of his assets and liabilities of the life insurance business as laid down in sub-section (1) of this section, *i e* such valuation has to be ascertained separately from the value of any other assets or any other liabilities of the insurer of any other branch and no such assets shall be applied to the discharge of any liabilities other than the e in respect of the said branch except in so far as those assets exceed the liabilities in respect of the other branch

In this case too, there shall be added to liabilities of the insurer in respect of that branch of the business an amount equal to such proportion of the *prima facie* surplus (to be determined in accordance with the principle laid down in the proviso *see* Note 3, *supra*, as is equivalent to such proportion of the profits allocated to shareholders and policy-holders as was allocated to policy holders of that branch during the ten years immediately preceding the commencement of the winding up and thereupon the assets of the insurer of that branch shall be deemed to exceed his liabilities only in so far as those assets exceed those liabilities after such addition

7. **Policy holders vis-a vis creditors in winding up**—Generally any assets of the company may form part of the general assets whereof all the creditors of the company in winding up rank *pari passu*, but the creditors of

any branch of its business in respect of which a separate fund is required to be kept are not entitled to have allocated to that fund any part of the company's investments which could not be proved to have been purchased from the receipts of that branch of business [1] It is to be remembered that the policy holders have no priority over general creditors in respect of the same branch of business [2] But in respect of a separate fund the policy-holders and creditors out of which they are to be paid have a preferential claim over other creditors on the fund [3] Again where the terms of the policies provide payment out of a named fund such policy-holders may be entitled to priority on that fund as secured creditors [4]

As a general rule a holder of a policy on which a claim has become payable cannot have any priority over other policy-holders of the same class,[5] but if his claim was paid before the winding up commenced this rule would have no application (see the above cases) Again, where the liability of the company is unlimited but the rights of the policy-holders are given to a fund the claims of others could not be met out of that fund but must be met by the members themselves [7] But when the special classes of policy holders could not be paid or met in full out of the said fund to which they have priority, the remainder of the assets must be divided rateably and without distinction between them and any other creditors [7]

When rights have been given specially to any class of insurance business it is important to know on winding up as to which specific class each contract of insurance falls, *e g* to decide whether endowment policies are to be classified as life policies [8]

Winding up of secondary companies

57 Where the insurance business or any part of the insurance business of an insurance company has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company (in this section referred to as the secondary company) or the creditors thereof has or have claims against the company to which such transfer was made (in this section referred to as the principal company) then, if the principal company is being wound up by or under the supervision of the Court, the Court shall (subject as hereinafter mentioned) order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two companies and make provision for such other matters as may seem to the Court necessary with a view to the companies being wound up as if they were one company

1 *Re London General Assurance* (1939) Ch 505, *Allchin* v *Coulthard* (1942) 2 K. B 228

2 *Glasgow Assurance (Liquidators of)* v *Welsh Insurance* 1914 S C 320

3 *Re Hearts of Oak Assurance* (1936) Ch 558

4 *Re British Imperial Insurance* (1878) 47 L J Ch 318 *Re International Life* (1876) 2 Ch D 476

5 *Re International Life* (1870) L R 5 Ch 424 *Re Teignmouth Mutual Shipping Association Re Martin's Claim*, (1872) L R. Eq 148

6 *Re Arthur Average* (1876) 3 Ch D 522, *Re London Marine* (1869) L. R 8 Eq 176 *Re Agricultural Cattle Insurance* (1874) L R 10 Ch 1 *Re State Fire* (1865) 34 L J Ch 436

7 *Re Nelson* (1907) 24 T L.R 74 *Re Agricultural Cattle Insurance* (1874) L R 10 Ch 1

8 *Re National Standard Life*, (1918) 1 Ch 427

(2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the secondary company

(3) In adjusting the rights and liabilities of the members of the several companies among themselves the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company or as near thereto as circumstances admit

(4) Where any company alleged to be secondary is not in process of being wound up at the same time as the principal company to which it is alleged to be secondary, the Court shall not direct the secondary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is secondary to the principal company and that the winding up of the company in conjunction with the principal company is just and equitable

(5) An application may be made in relation to winding up of any secondary company in conjunction with the principal company by any creditor of, or person interested in, the principal or secondary company

(6) Where a company stands in the relation of a principal company to one insurance company and in the relation of a secondary company to some other insurance company or where there are several insurance companies standing in the relation of secondary companies to one principal company, the Court may deal with any member of such companies together or in separate groups as it thinks most expedient upon the principles laid down in this section

SYNOPSIS

1 *Object and scope*
2 *Secondary company, meaning of*
3 *Winding up of secondary company Court's power in such winding up, sub-section* (1)
4 *Winding up of secondary company when commences, subsection* (2)
5 *Court's duties in adjusting rights and liabilities of members of several companies, sub section* (3)
(A) *'Contributory', definition of*
(B) *Rights and liabilities of contributories*
6 *When the court shall not direct the secondary company to be wound up and when it shall so direct, sub-section* (4)
7 *Who can make an application under this section*
8 *Court's power to deal with several companies, sub-section* (6)

1 Object and scope—The object of the section is to provide for simultaneous winding up of two or more companies when they stand to each other or one another as principal and secondary companies within the meaning given in this section

The section provides for the procedure of winding up of secondary companies along with the principal companies It speaks of when the commencement of the winding up will be said to commence, where the Court should direct winding up of secondary companies and where it will not so direct and who can make an application for such winding up The section also confers powers on the Court to adjust the rights and liabilities of the members of the several companies and to deal with any number of such companies together or in separate groups The Court has also been given the powers to appoint the same liquidator in respect of those companies and to give directions with regard to such other matters as may seem necessary to wind up those companies as if they were one company

This section is similar and identical in language with section 16 of the English Insurance Companies Act, 1958, except that the expression "subsidiary company" has been used in that section instead of "secondary company" as used in this section

2 **Secondary company, meaning of**—The expression "secondary company" has been defined in sub-section (1) of the section to mean a company where its insurance business or any part thereof has been transferred to another insurance company under an arrangement in pursuance of which the first mentioned company, *i e*, the transferor company, or the creditors thereof has or have claims against the company, *i e*, the transferee company, to which such transfer was made The transferor company aforesaid is known as the 'secondary company' and the transferee company aforesaid is known as the 'principal company' In other words, the secondary company in relation to its principal company stands in the position of a transferor company where the latter transfers either the whole or part of its insurance business to the principal or transferee company under an arrangement that the transferor company or its creditors shall have claims against the transferee company

Under the English Insurance Companies Act, 1958, such a transferor insurance company is known as the 'subsidiary company' and the transferee company is known as the 'principal company' The definitions in both the Acts are same and identical with this difference that under this Act what is called the 'secondary company' is called the 'subsidiary company' under the English Act [1] Before the Life Assurance Companies Act, 1870, the court had no jurisdiction to make one winding-up order in respect of two distinct companies, however much the affairs of the companies might be involved the one with the other [2]

The expressions "secondary company" as used in this Act and "subsidiary company" as used in the English Act must not be confused with the 'subsidiary company' as defined in the Companies Act Hence, the mere fact that one company had by purchasing of shares acquired a controlling interest in another company and that there was a treaty of mutual re-insurance would not make one the secondary or subsidiary to the other within the meaning of this section or section 16 of the English Act. A transfer business with the arrangement must be essential [3]

3 **Winding up of secondary company, court's power in such winding up sub section (1)**—Sub-section (1) lays down that when a principal company is being wound up by or under the supervision of the court, the

1 S 16 of the Insurance Companies Act 1959

2. *Re Shields Marine Association* (1867) L. R. 5 Eq 308

3 *Re Lancashire Plate Glass Insurance* (1912) 1 Ch 35

court shall have power to order the secondary company to the said principal company to be wound up jointly with the latter The court has the power while passing the order of winding up to appoint the same person as th liquidator of both the companies or it can so appoint by any subsequent order thereto For the purposes of the winding up the court has discretion to treat both the companies as one company and to pass such orders or to make such provisions as are necessary or incidental for both the companies b ing wound up Under the present Companies Act only the official liquidator can be appointed as the liquidator in winding up and hence the contingency of appoint ing two persons as the liquidators of the said two companies does not arise

4 Winding up of secondary company, when commences sub-section (2)—Sub-section (2) lays down that the commencement of the winding up of the principal company shall be the commencement of the winding up of the secondary company but where the court otherwise directs the commencement of the winding up will be from that date Ordinarily, the winding up of a company by the court is deemed to commence at the time of the presents tion of the petition for the winding up But where, before the presentation of such a petition, a resolution has b en passed by the company for voluntary winding up the date of winding up is deemed to commence at the time of the passing of the resolution unless there is fraud or mistake [1]

5 Court s duties in adjusting rights and liabilities of members of several companies sub section (3)—Sub-section (3) empowers the court to adjust the right and liabilities of the members of the several compani s among themselves involved in the winding up before it But in exercising these powers the court must perform the following duties

(*i*) it must give due regard to the constitution of the companies, and

(*ii*) it must give due considerations to the arrangements entered into between the companies in the same manner as it gives to the rights and liabilities of different classes of contributories in the case of the winding up of single company or as near thereto as circumstances admit

A "Contributory" definition of—The term "contributory" means every person liable to contribute to the ass-ts of a company in the event of its being wound up and includes the holder of any shares which are fully paid up , and for the purposes of all proceedings for determining and all proceedings prior to the final determination of the persons who are to be deemed con tributories, includes any person alleged to be a contributory [2]

B Rights and liabilities of contributories—With regard to the rights of the contributories section 511 of the Companies Act, 1956, provides that subject to the provisions of that Act as to preferential payments, the assets of a company shall on its winding up be applied in satisfaction of its liabilities *pari passu* and subject to such application, shall, unless the Articles otherwise provide, be distributed among the members according to their rights and interests in the company [3]

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1 S 441 Companies Act 1956

2 S 428 Companies Act 1956 see *Re Lakhmi Flour Mills Co* 1926 All 101 *Yup Ram v Fatal Din* I L R 1 Lah 237 *Re Morron and Co* 168 I C 185 ; *Re Consolidated Goldfields of New Zealand Ltd* (1951) Ch 683 *Re Phoenix Oil and Transpo t Co Ltd* (1957) 3 W L R 633 ; *Re Hill Ltd* (1933) Ch 323

3 As to preferential payments see S 530 and as to priority of payments see S 520 see also *Re Merchant Navy Supply Association* (1947) W N 154 *Re E W Savory Ltd* (1951) 2 All P R 103 ; *Re Phoenix Oil and Transport Co Ltd* (1951) Ch 503 *Re Duncan Gilmour and Co* (1932) 2 All E R 871 *Government of India v Taylor* (1955) 1 All E R 292 (H L) *Re Delta Electric Supply and Traction Co Ltd* (1958) 2 All E R 1452 *Anglo-Baltic Bank v Barber and Co* (1924) 2 K B 110

The liability of a contributory extends only to the amount, if any, remaining unpaid on the shares held by him [1]

6 When the court shall not direct secondary company to be wound up and when it shall so direct sub section (4) —This section does not contemplate automatic winding up of a secondary company when a principal company is wound up, but a secondary company can be wound up at the same time when the principal company is in the process of being wound up Whether an order for winding up an alleged secondary company should be passed or not when it is not in the process of being wound up at the same time as the principal company to which it is alleged to be secondary, the court must have regard to the following considerations

(i) it must not direct the secondary company to be wound up merely upon the allegation that it is a secondary company to the principal company which is being wound up before it, in this regard its duties would be (*a*) to hear all objections (if any) that may be urged by or on behalf of the company against its being wound up and upon hearing all such objections—

(ii) it must form the opinion that the company is secondary to the principal company, and

(iii) it must also be of the opinion that the winding up of the company in conjunction with the principal company is just and equitable

When the court forms the aforesaid opinion on hearing the objections that it can pass an order for winding up the secondary company and such winding up must on the ground of being 'just and equitable' as envisaged in section 433 (*f*) of the Companies Act, 1956 [2]

7 Who can make an application under this section —An application for an order of winding up of any secondary company in conjunction with the principal company may be made—

(i) by any creditor of the principal or secondary company, or

(ii) by any person interested in the principal or secondary company,[3]

8 Court's power to deal with several companies sub section (6) —Sub section (6) confers discretionary power on the court to deal with any number of secondary companies to one principal company or a company standing in the relation of a principal company to one insurance company and in the relation of a secondary to some other insurance company either jointly or in separate groups as it may think most expedient upon the principles laid down in the section Under this sub section the court will be called upon to exercise its discretion to decide as to whether the winding up of the several companies should be ordered together or in separate groups It should pass an order in such a case as would appear to it be most expedient, *i e* where it would form an opinion that winding up of those companies either together or in separate groups, as the case may be is just and equitable The companies that can be dealt with under this sub-section are (i) a company standing in the relation of a principal company to one insurance company and in the relation of a secondary to some other insurance company, that is

1 S 426 (1) (d) of the said Act *see* also *Montgomery* v *Sikdar Iron Works Ltd*, 59 Cal 1099 *In re Apex Film Distributors* 1959 Com Cases 408 *Hanuraj* v *Asthana*, 60 I A 1 54 All 827 ; *see* also S 12 (2) (a) of the said Act

2 *See* Note 6 under S 53 *supra*

3 *See* Note 7 under S 53, *supra*

to say, when '*A*' company stands in the relation of a principal company to insurance company '*B*' and in the relation of a secondary company to insurance company '*C*', on the winding up of '*A*' the court has power to deal with '*B*' and '*C*' companies under this sub section either together or in separate groups, *i e*, *AB* group or *AC* group or in *BC* group as the court will think most expedient, *i e* just and equitable, because *A* is principal and *B* is secondary, hence *A* and *B* can be grouped together, so also *C* is principal and *A* is secondary, hence *A* and *C* can be grouped together, again *B* being secondary to *A* which is also secondary to *C*, *B* is also secondary to *C* and hence *B* and *C* can also be grouped or all of them can be wound up together, and

(ii) Several insurance companies standing in relation of secondary companies to one principal company, *i e*, when *A*, *B* and *C* insurance companies stand in relation of secondary companies to company *B*, they can all be wound up together or they can be wound up in separate groups as *A* and *D*, *B* and *D* or *C* and *D*

Schemes for partial winding up of insurance companies

58 (1) If at any time it appears expedient that the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up but that any other class of business comprised in the undertaking should continue to be carried on by the company or be transferred to another insurer, a scheme for such purposes may be prepared and submitted for confirmation of the Court in accordance with the provisions of this Act

(2) Any scheme prepared under this section shall provide for the allocation and distribution of the assets and liabilities of the company between any classes of business affected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy holders in respect of their policies and for the manner of winding up any of the affairs of the company which are proposed to be wound up and may contain provisions for altering the memorandum of the company with respect to its objects and such further provisions as may be expedient for giving effect to the scheme

(3) The provisions of this Act relating to the valuation of liabilities of insurers in liquidation and insolvency and to the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in like manner as they apply in the winding up of an insurance company, and a scheme under this section may apply with the necessary modifications any of the provisions of the Indian Companies Act, 1913, relating to the winding up of companies

(4) An order of the Court confirming a scheme under this section whereby the memorandum of a company is altered with

respect to its object shall as respects the alteration have effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913 (VII of 1913), and the provisions of sections 15 and 16 of that Act shall apply accordingly

(5) When making an order confirming a scheme under this section, the Court may make such orders as it considers necessary for the disposal of so much of the deposit made by the company under section 7 or section 98 as does not relate to the classes of insurance business, if any, which the company continues to carry on

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Partial winding up, requisites of sub section* (1)
4 *What the scheme should provide sub-section* (2)
5 *Valuation of liabilities and application of surplus assets - sub-section* (3)
6 *Powers of the Court sub-sections* (4) *and* (5)

1 Legislative changes —Sub-section (5) of the section was inserted by Act VI of 1946

2 Object and scope —The object of the section is to provide for "a new provision to enable part of the business of a composite company to be carried on while the remainder is wound up and seems desirable as an addendum to the adoption of the principle of separation of assets, in order to preserve and work out the rights of policy-holders of a particular class in regard to assets allocated to business of that class" (Clauson Committee Report in respect of clause 18 of the Clauson Committee Bill, which is being almost reproduced in the section)

This section provides a machinery by which a partial winding up of a company carrying on composite insurance business can be made Under the Companies Act there is no provision for a partial winding up of a company rather section 497 of that Act speaks of a company being "fully wound up" Even under the English Companies Act, 1948, a contingency of a partial winding up has not been contemplated, rather section 274 (1) of that Act provides, 'when the affairs of a company have been 'completely wound up', the court if the liquidator makes an application in that behalf, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly" *Hence, this section makes a special* provision for partial winding up of a company and empowers the court to pass an order to that effect consistent with the provisions contained therein without making an order that the company be fully wound up and dissolved as provided in the Companies Act

The partial winding up of the affairs of an insurer or any should be effected through a scheme prepared for the purpose and sanctioned by the court The scheme should indicate which class of business unopposed the undertaking of the company should be wound up and which class of business therein should continue to be carried on by it or be transferred to another insurer The scheme should also provide for the

distribution of its assets and liabilities between different classes of business affected and for any future rights of every class of policy holders as provided in sub section (2) of this section

In effecting the partial winding up the valuation of liabilities and application of surplus assets of life insurance fund in liquidation or insolvency as provided in the preceding sections 55 and 56 shall also apply to that part of the affairs of the company sought to be wound up The court has also been empowered to make necessary alterations in the objects of the company in its memorandum while confirming a scheme under this section and at the same time it has powers to make necessary orders for the disposal of as much of the deposit made in pursuance of section 7 or section 98 as will be necessary and does not relate to the classes of insurance business which the company continues to carry on

3 **Partial winding up, requisites of sub-section** (1) —The requisites of a partial winding up as envisaged under sub-section (1) of this section are—

(*i*) it must appear expedient that—

(*a*) the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up, but

(*b*) any other class of business comprised in the said undertaking should continue to be carried on by the company, or

(*c*) that other class of business should be transferred to another insurer ,

(*ii*) a scheme for such purpose as aforesaid should be prepared,

(*iii*) the scheme must be submitted to the court, and

(*iv*) it must be confirmed by the court

The scheme for a partial winding up can be prepared and submitted for confirmation of the court under this section at any time but it must be made before the company is 'fully wound up' within the meaning of section 497 of the Companies Act, 1956, and is dissolved The persons competent to prepare the scheme and submit same for the confirmation of the court are the company or the persons competent to apply to court for winding up order[1] , or by the Controller when he sanctions a scheme under section 36 of the Act

4 **What the scheme should provide sub section** (2) —The scheme prepared under sub section (1) for the partial winding up of the company must provide for—

(*i*) the allocation and distribution of the assets and liabilities of the company between any classes of business affected, which must include the allocation of any surplus assets which may arise on the proposed winding up,

(*ii*) any future rights of every class of policy-holders in respect of their policies, and

(*iii*) the manner of winding up any of the affairs of the company which are proposed to be wound up

In addition to above the scheme may provide for—

(*i*) altering the memorandum of the company with respect to its objects, and

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1 *See* Note 7 under S 53 *supra.*

(ii) such further provisions as may be expedient for giving effect to the scheme

It may be noted that the scheme prepared under this section is not the same scheme as prepared under section 35 of this Act for the purposes of amalgamation and transfer of insurance business in respect of which the Controller is the sanctioning authority But the scheme prepared under this section is more or less akin to the scheme and arrangement as provided in sections 391 to 395 of the Companies Act, 1956 Hence all the incidents of those sections of the Companies Act may be conveniently applied to the scheme under this section when the court proceeds to confirm a scheme

5 **Valuation of liabilities and application of surplus assets, sub-section (3)** —Sub-section (3) of this section lays down that the valuation of liabilities of insurers in liquidation or insolvency and the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in the same manner as they apply in the winding up of an insurance company, that is to say, for the purposes of a partial winding up of a company under this section, the valuation of the liabilities has to be made as provided in section 55 and the application of surplus assets of life insurance fund has to be made as provided in section 56 of the Act Moreover, this sub section also lays down that any provision of the Companies Act relating to the winding up of companies may be applied to the scheme under this section with necessary modifications, that is to say, section 494 of the said Act may be applied to the scheme under this section with necessary modifications

6 **Powers of the court, sub sections (4) and (5)** —In confirming a scheme under this section the court has the following powers

(i) to alter the object of the company as set forth in its memorandum of association, this alteration has the effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913 (VII of 1913) corresponding to section 17 of the Companies Act, 1956 (I of 1956) and the provisions of sections 15 and 16 of the previous Act corresponding to sections 18 and 19 of the present Act shall apply accordingly, and

(ii) to make such orders as it considers necessary for the disposal of so much of the deposit made by the company under section 7 or section 98 as does not relate to the classes of insurance business, if any, which the company continues to carry on [1]

Return of deposits

59 In the winding up of an insurance company otherwise than in a case to which section 58 applies and in the insolvency of any other insurer the liquidator or assignee, as the case may be, shall apply to the Court for an order for the return of the deposit made by the company or the insurer, as the case may be, under section 7 or section 98 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct

SYNOPSIS

1 *Legislative changes* 2 *Object and scope*

1 *See* S 36 regarding disposal of any deposit made under these sections viz. S 7 or case of amalgamation and transfer

distribution of its assets and liabilities between different classes of business affected and for any future rights of every class of policy holders as provided in sub section (2) of this section

In effecting the partial winding up the valuation of liabilities and application of surplus assets of life insurance fund in liquidation or insolvency as provided in the preceding sections 55 and 56 shall also apply to that part of the affairs of the company sought to be wound up The court has also been empowered to make necessary alterations in the objects of the company in its memorandum while confirming a scheme under this section and at the same time it has powers to make necessary orders for the disposal of as much of the deposit made in pursuance of section 7 or section 98 as will be necessary and does not relate to the classes of insurance business which the company continues to carry on

3 **Partial winding up, requisites of sub-section (1)** —The requisites of a partial winding up as envisaged under sub-section (1) of this section are—

(*i*) it must appear expedient that—

(*a*) the affairs of an insurance company in respect of any class of business comprised in the undertaking of the company should be wound up, but

(*b*) any other class of business comprised in the said undertaking should continue to be carried on by the company, or

(*c*) that other class of business should be transferred to another insurer ,

(*ii*) a scheme for such purpose as aforesaid should be prepared,

(*iii*) the scheme must be submitted to the court, and

(*iv*) it must be confirmed by the court

The scheme for a partial winding up can be prepared and submitted for confirmation of the court under this section at any time but it must be made before the company is 'fully wound up' within the meaning of section 497 of the Companies Act, 1956, and is dissolved The persons competent to prepare the scheme and submit same for the confirmation of the court are the company or the persons competent to apply to court for winding up order[1] , or by the Controller when he sanctions a scheme under section 36 of the Act

4 **What the scheme should provide sub section (2)** —The scheme prepared under sub-section (1) for the partial winding up of the company must provide for—

(*i*) the allocation and distribution of the assets and liabilities of the company between any classes of business affected, which must include the allocation of any surplus assets which may arise on the proposed winding up,

(*ii*) any future rights of every class of policy-holders in respect of their policies and

(*iii*) the manner of winding up any of the affairs of the company which are proposed to be wound up

In addition to above the scheme may provide for—

(*i*) altering the memorandum of the company with respect to its objects, and

1 *See* Note 7 under S 53 *supra*.

(ii) such further provisions as may be expedient for giving effect to the scheme

It may be noted that the scheme prepared under this section is not the same scheme as prepared under section 35 of this Act for the purposes of amalgamation and transfer of insurance business in respect of which the Controller is the sanctioning authority But the scheme prepared under this section is more or less akin to the scheme and arrangement as provided in sections 391 to 395 of the Companies Act, 1956 Hence all the incidents of those sections of the Companies Act may be conveniently applied to the scheme under this section when the court proceeds to confirm a scheme

5 **Valuation of liabilities and application of surplus assets, sub section (3)** —Sub-section (3) of this section lays down that the valuation of liabilities of insurers in liquidation or insolvency and the application of surplus assets of the life insurance fund in liquidation or insolvency shall apply to the winding up of any part of the affairs of a company in accordance with the scheme under this section in the same manner as they apply in the winding up of an insurance company, that is to say, for the purposes of a partial winding up of a company under this section, the valuation of the liabilities has to be made as provided in section 55 and the application of surplus assets of life insurance fund has to be made as provided in section 56 of the Act Moreover, this sub section also lays down that any provision of the Companies Act relating to the winding up of companies may be applied to the scheme under this section with necessary modifications that is to say, section 494 of the said Act may be applied to the scheme under this section with necessary modifications

6 **Powers of the court, sub-sections (4) and (5)** —In confirming a scheme under this section the court has the following powers

(i) to alter the object of the company as set forth in its memorandum of association, this alteration has the effect as if it were an order confirmed under section 12 of the Indian Companies Act, 1913 (VII of 1913) corresponding to section 17 of the Companies Act, 1956 (I of 1956) and the provisions of sections 15 and 16 of the previous Act corresponding to sections 18 and 19 of the present Act shall apply accordingly, and

(ii) to make such orders as it considers necessary for the disposal of so much of the deposit made by the company under section 7 or section 98 as does not relate to the classes of insurance business, if any, which the company continues to carry on [1]

Return of deposits

59 In the winding up of an insurance company otherwise than in a case to which section 58 applies and in the insolvency of any other insurer the liquidator or assignee, as the case may be, shall apply to the Court for an order for the return of the deposit made by the company or the insurer, as the case may be, under section 7 or section 98 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct

SYNOPSIS

1 *Legislative changes* 2 *Object and scope*

1 *See* S 36 regarding disposal of any deposit made under these sections *viz.*, S 7 or ' case of amalgamation and transfer

2. Legislative changes.—The words and figures "otherwise than ... section 53 applies" were inserted by Act VI of [illegible] ... words and figures "deposit made by the company or the insurer, as the ... section 7 or section 98" were substituted for the words and figures "deposit made by the company under section 7" by Act VI of [illegible] ...

2. Object and scope.—The object of the section is to empower ... Court in winding up or insolvency, as the case may be, to make ... orders for the return of the statutory deposits made in pursuance of ... of sections 8 of the Act when an application is made to it either by ... liquidator or the assignee, as the case may be.

Under section 2 (5) of the Assurance Companies Act, 1909, the ... deposit was part of the assets of the company and that section had ... provided and received with regard to mutual associations. This ... remains such except where excluded by the general liabilities to which ... assets are subject. Under section 3 (1) of the Insurance Companies Act ... separate funds are kept for life insurance, industrial insurance, boat ... ment and employers' liability insurance businesses which are available ... payment to that class of insurance business to which the policy-holders ... concerned belong, in preference to any other policy-holders of any ... class. It has been said that this separation of fund is a mere book ... and there is no obligation to earmark investments for any particular ... but that the surplus or profit in respect of such fund, ascertained ... manner required by the Act and which it is determined to distribute ... as part of that fund.

certain privileges on the persons mentioned therein to give notice of disputing any value made by the liquidator or the assignee of which notice had been given to them

2 **Liquidator's or assignee's duties** —The duties of the liquidator or assignee in case of winding up or insolvency, as the case may be, as laid down in this section are—

(i) to ascertain the value of the liability of the company or other insurer to each person appearing by the books of the company or other insurer to be entitled to or interested in the policies granted by the company or other insurer , and

(ii) to give notice of such value to those persons as the Court may direct

The liquidator's duties as to valuation of liabilities in the Insurance Companies Act, 1958, have been given in the Fourth Schedule to that Act, The liquidator's duties under the said Act are identically the same as the duties of the liquidator under this Act He is also (i) to ascertain the value of the liability of the company to each person appearing by the books of the company to be entitled to or interested in policies granted by the comyany, and (ii) to give notice of that value to such persons in such manner as the Court may direct The duties of the liquidator relate to cases where the company is being wound up by the Court or subject to the supervision of the Court Unlike this section the duties of the liquidator under the English Act are irrespective of whether a cash distribution of the assets in the winding up is intended or not

3 **Notice, its effect** —When the notice of the policy values is given to the person appearing by the books of the company to be entitled to or interested in the policies in the manner directed by the Court he shall be bound by the value so ascertained by the liquidator unless he notifies within the time specified by any rule or order of the Court of his intention to dispute such value The law as laid down in the English Act in the Fourth Schedule is exactly similar to what is stated in this section

4 **Dispute as to valuation** —The person or persons who have been served with the notice of policy values by the liquidator as required under this section, has or have the right to give notice of his intention to dispute such value In disputing such value he shall have to give the notice within the time either specified by any rule or order of the Court His notice will be barred by time if he fails to give the notice within the said time Moreover, he shall have to give notice in the manner as may be indicated in any rule or order of the Court If the notice does not conform to the form in which it is to be given the notice may turn out to be invalid In both the cases his notice will be of no avail and the policy values will become binding on him So in giving the notice for the purpose of disputing the policy value he must be careful about the time specified or the manner indicated in any rule or order of the Court The law laid down in the English Act in the Fourth Schedule is the same as laid down in this section

Power of Court to reduce contracts of insurance

61 (1) Where an insurance company is in liquidation or any other insurer is insolvent the Court may make an order reducing the amount of the insurance contracts of the company or other

insurer upon such terms and subject to such conditions as the Court thinks just

(2) Where a company carrying on the business of life insurance has been proved to be insolvent, the Court may if it thinks fit in place of making a winding-up order reduce the amount of the insurance contracts of the company upon such terms and subject to such conditions as the Court thinks fit

(3) Application for an order under this section may be made either by the liquidator or by or on behalf of the company or by a policy-holder or by the Controller and the Controller and any person whom the Court thinks likely to be affected shall be entitled to be heard on any such application

SYNOPSIS

1 *Object and scope*
2 *Amount of insurance contracts, reduction of, sub-section* (1)
3 *Reduction of insurance contracts instead of winding-up order, sub-section* (2)
4 *Persons competent to apply and to be heard, sub-section* (3)
5 *Appeal*
6 *"Oversea" companies under the English Act*

1 Object and scope—The object of the section is to empower the court to reduce the amount of the insurance contracts in winding up or insolvency proceedings or in case of a company carrying on life insurance business to reduce the amount of its contracts instead of making a winding up order There is a difference in the power of the court as laid down in sub-sections (1) and (2) While sub section (1) confers on the court a general power to reduce the amount of insurance contracts in respect of all insurers irrespective of whether they carry on life insurance business or not and even while passing an order of winding up, whereas the power conferred on it under sub-section (2) is restricted only to those insurers who are companies and carry on life insurance business and the order that it may pass under this sub-section is the reduction of contracts and not an order of winding up While this section empowers the Court to reduce the amount of insurance contracts the manner by which such reduction is to be affected has been laid down in section 55 1

2 Amount of insurance contracts, reduction of, sub section (1)—Sub-section (1) confers discretionary power on the court either in winding up or insolvency proceedings to make an order reducing the amount of the insurance contracts of the company or other insurer where that company or the insurer is in liquidation or is insolvent, as the case may be While making such an order the court has power to impose such terms and conditions as it may think expedient in the circumstances of each case Its discretion is not restricted in any way and it can pass the order of winding up even after effecting the reduction of the amount of insurance contracts But before the court exercises its discretion under this section it should ascertain the wishes of policy holders and shareholders or the insurer concerned 2

1 *See Note 5 under S 55 supra*

2 *Re Guardian Mutual Life* (1880) 16 Ch D 246; subsequent proceedings (1883) 20 Ch D 351 C A

3 Reduction of insurance contracts instead of winding-up order, sub-section (2)—Sub-section (2) also confers discretionary power on the court to make an order reducing the amount of the insurance contracts instead of making a winding up order where a company carrying on the business of life insurance has been proved to be insolvent In making such an order the court has also the power to impose such terms and conditions as it thinks fit and proper The order under this sub-section is a substitute for a winding up order

Where during the hearing of a winding-up petition it is suggested that the amount of reduction of insurance contracts can be arranged, the court may order the petition to stand over for the purpose of enabling meetings to be summoned and the matter may be referred to the chambers [1] In *Satish Chandra* v *Superintendent of Insurance*,[2] where an order made for winding-up an insurance company was suspended pending the formulation and approval of a scheme of arrangement, when, subsequent thereto, one of the policy-holders put in an application formulating a scheme of reduction of policy contracts suggesting that the company should be treated as a closed concern without taking in any new policies and in case of winding up, the policy-holders could expect to get very little but if it was allowed to go on with a reduction of policy contracts they could possibly receive the full amount of reduced values of their policies, in the circumstances it was held that the property of the company was intended for the benefit of policy-holders and the court should consult them whether they prefer carrying on the company with a reduction of policy contracts or prefer the winding up In the instant case the appeal was allowed to stand over until the wishes of the policy holders had been ascertained [3] But where the scheme is that the policy-holders whose claims had matured should be paid in full and that other policies should be reduced the policies maturing after the date of presentation of the winding-up petition should not be paid in full [4] Again where a scheme is meant for an insolvent company to carry on business after relieving a part of its present and future liabilities, the court must not entertain such a scheme [5] When a scheme for reduction of contract is sanctioned by the court it binds the company and all policy-holders so that a policy holder who continued to pay his premium in ignorance of the scheme is not entitled to have his premiums returned [6]

4 Persons competent to apply and to be heard, sub-section (3)—The persons competent to apply for orders under this section are—

(*i*) liquidator, (*ii*) company (*iii*) any person on behalf of the company, (*iv*) policy-holder, and (*v*) the Controller

But the court has the discretion to hear the Controller, when the petition is not made by him, and any person whom the court thinks fit, likely to be affected, to be heard on any such application

5 Appeal—An order under this section passed by the High Court in exercise of its ordinary civil jurisdiction is a judgment within clause 15 of the Letters Patent, Calcutta, and is appealable and the Superintendent of Insurance (Controller) is entitled to appeal against an order under this section [7]

1 *Re Britton Medical & General* (1886) 54 L T 14 *Re Clarke (John) & Co* (1912) Ir R 2‡

2 I L R (1944) 1 Cal 557

3 *See Re Great Britain Mutual Life* (1880), 20 Ch D 351 C A

4 *Ibid*

5 *Re Nelson & Co* (1905) 1 Ch 551

6 MacGillivray Insurance Law 5th Ed Vol I, p 96

7 *Light of Asia Insurance Co Ltd, In the matter of* I L R (1942) 2 Cal 85 : 46 C W N 441 1942 Cal 578

SPECIAL PROVISIONS RELATING TO EXTERNAL COMPANIES

62 Where, by the law or practice of any country outside India in which an insurer carrying on insurance business in India is constituted, incorporated or domiciled, insurance companies incorporated in India are required as a condition of carrying on insurance business in that country to comply with any special requirements whether as to the keeping of deposits or assets in that country or otherwise which is not imposed upon insurers of that country under this Act, the Central Government shall, if satisfied of the existence of such special requirement, by notification in the official Gazette, direct that the same requirement or requirements as similar thereto as may be, shall be imposed upon insurers of that country as a condition of carrying on the business of insurance in India

Power of Central Government to impose reciprocal disabilities on non Indian companies

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *When the Central Government to exercise its powers*
4 *How the Central Government to exercise its powers*
5 *Retaliatory legislation*
6 *"Oversea" companies under the English Act*

1 Legislative changes—The word "India" occurring in the section has been substituted by Act LXII of 1956

2 Object and scope—The object of the section is to empower the Central Government to impose upon the insurers of any country the same restrictions or as similar thereto as possible, where restrictions are imposed on companies incorporated in India in that country The enactment under this section is a sort of retaliatory legislation intended for the protection of domestic insurance companies from impositions which might be or had put on them by other countries Although the enactment is retaliatory its true object is one of comity and the section is designed to create substantial equality of burdens in respect of foreign and domestic insurance companies This section will come into play and the Central Government will derive the power therefrom only when there exist restrictions on Indian insurance companies carrying on insurance business in a foreign country which restrictions are not applicable to insurance companies of that country which are not imposed in British India [India] on nationals of that country to impose those requirements on nationals of that country" [Select Committee] The section itself is not a piece of retaliatory legislation but it delegates the powers of the Legislature to impose retaliatory restrictions on the Central Government when occasions for such retaliation arise

3 When the Central Government to exercise its powers—The Central Government can exercise its powers under the section only when it is satisfied of the existence of special requirements required of the insurance companies incorporated in India as a condition of carrying on insurance business in that country to comply with those requirements which are not imposed on the insurers of that country under this Act These special

requirements may relate as to the keeping of deposits of assets in that country or otherwise Moreover, there must exist reciprocity at the same time between the insurers of other countries carrying on insurance business in India and the Indian companies carrying on insurance business in that country Suppose 'A' an Indian company has been carrying on insurance business in 'P' country but no insurer of 'P' country carries on insurance business in India although special requirements were required of 'A' to comply with as a condition of carrying on insurance business in that country to which insurers of 'P' country carrying on insurance business were not subject, in such a case the Central Government derives no power under this Act Similarly, where 'X' an insurer of 'Y' country is carrying on insurance business in India but no company incorporated in India is carrying on that business in 'X' country although special requirements of a discriminating nature exist in 'X' country for an Indian company to carry on insurance business there, even in such a case the Central Government does not derive any power under this section

4 **How the Central Government to exercise its powers ?**—The Central Government has to exercise its powers under this section by notification in the official Gazette wherein directions should be issued that the same requirement or requirements as similar thereto as may be, are imposed upon insurers of that country (where discrimination as to carrying on of insurance business between insurers of that country and the companies incorporated in India carry on insurance business there exist) as a condition of carrying on the business of insurance in India

5 **Retaliatory legislation**—"A State has power to protect its own domestic insurance companies doing business in other States from burdens, prohibitions and limitations placed on them, and in some States statutes of a retaliatory nature have been enacted which provide, in effect, that foreign companies shall be subject to same restrictions, burdens, penalties, etc , as are imposed by the State of their creation on companies of the State enacting the statutes Such statutes are a complete and absolute expression of the legislative will, and although their operation depends on the contingency of legislative action in other States, they are not thereby rendered unconstitutional The purpose of such laws is to protect domestic insurance companies from impositions which might be put on them by other States, and they are not deemed in any essential sense to be revenue measures While they are called 'retaliatory" statutes their true object is one of comity and they are designed to create substantial equality of burdens in respect of foreign and domestic insurance companies In the construction of retaliatory statutes of this character, although the legislative intent is to be ascertained and regarded, they must be strictly construed Such statutes should be invoked only where inequitable discrimination against domestic companies operative in the foreign State is clearly established, and a foreign company will not be excluded from the State under its provisions unless it clearly appears that the effect of the foreign law in its practical administration would be to exclude similar companies organized under the laws of the State [1]

6 **"Oversea" companies under the English Act**—Section 23 of the Insurance Companies Act, 1958, makes provisions regarding the oversea companies thus "The following provisions of the Companies Act, 1948, that is to say sections 407, 409 to 415 and 425 if apart from this section they would not so apply, shall apply in relation to an insurance company constituted outside Great Britain which carries on insurance business within

1 44 C J S, pp 560-562

Great Britain as they apply in relation to oversea companies within the meaning of section 406 of that Act The latter section (section 406) applies only to companies incorporated outside Great Britain with an established place of business within it Such companies are known as 'oversea companies" Section 407 of the Act of 1948 requires an oversea company to deliver certain documents to the Registrar of Companies An oversea company is entitled, under section 408, to hold lands in the United Kingdom in spite of the Mortmain and Charitable Uses Act, 1888[2] Section 410 deals with accounts, section 411 with statements of name and country of incorporation, section 412 with service of process, section 413 with filing of documents, and section 414 with penalties"

Although the Insurance Companies Act, 1958, applies to oversea companies as stated above but sections 2 and 13, as to paid up share capital and margin of solvency are only to apply to them subject to such adaptations as appear to the Board of Trade to be necessary[3] The said Act applies to Scotland but not to Northern Ireland where a similar Act, namely, Assurance Companies Act (Northern Ireland), 1947, is to be found

Particulars to be filed by insurers established outside the States

63 Every insurer, having his principal place of business or domicile outside India who establishes a place of business within India or appoints a representative in India with the object of obtaining insurance business, shall within three months from the establishment of such place of business or the appointment of such representative, file with the Controller—

(a) a certified copy of the charter, statutes, deed of settlement or memorandum and articles or other instrument constituting or defining the constitution of the insurer, and, if the instrument is not written in the English language, a certified translation thereof,

(b) a list of the directors, if the insurer is a company,

(c) the name and address of some one or more persons resident in India authorised to accept on behalf of the insurer service of process and any notice required to be served on the insurer together with a copy of the power of attorney granted to him

(d) the full address of the principal office of the insurer in India,

(e) a statement of the classes of insurance business to be carried on by the insurer, and

(f) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed on the country of origin of the insurer on Indian nationals,

1 *See Re United General Commercial Insurance* (1927) 2 Ch. 51

2. Now repealed but *see* S 38 of the Charities Act 1960

3 *See* S 1 of the Act and Schedule II Part III, para 9 thereto

and, in the event of any alteration being made in the principal office or in the classes of business to be carried on, or any instrument here referred to, or in the name of any of the persons here referred to, or in the matters specified in clause (*f*) above, the company shall forthwith furnish to the Controller particulars of such alteration

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Insurer having his principal place of business or domicile outside India*
4 *Who establishes a place of business within India or appoints a representative in India*
5 *Particulars to be filed by foreign insurers*
6 *Time within which and the language in which the particulars are to be filed*

1 Legislative changes —The word "India" occurring in the section was substituted by Act LXII of 1956, the word 'Controller" occurring therein was substituted by Act XLVII of 1950 and the word "representative' also occurring therein was substituted for the word "agent" by Act XI of 1939 The word "States" occurring in the marginal note should be read as "India"

2 Object and scope —The object of the section is to receive information from any foreign insurer who either establishes a place of business or appoints a representative in India with the object of obtaining insurance business in this country and to keep an effective check on such insurer as to his complying with the requirements of this Act through the Controller This section is more or less in the line of sub-section (1) of section 19 of the Indian Life Assurance Companies Act (VI of 1912) repealed by section 123 of this Act

This section requires of a foreign insurer establishing a place of business or appointing a representative in India with a view to obtain insurance business certain particulars mentioned in clauses (*a*) to (*f*) of this section to be filed with the Controller within the time specified in the section, He is also to furnish forthwith to the Controller any alteration, if made, of those particulars Part XI of the Companies Act, 1956, dealing with sections 591 to 608 makes provisions for companies incorporated outside India Those sections replace sections 277 to 277E of the Indian Companies Act, 1913 Those sections, *viz* sections 591 to 608 of the present Act more or less follow the provisions of sections 406 to 423 of the English Act of 1948 The provisions of sections 592 to 602 of the present Act have been made applicable by section 591 of that Act to all foreign companies falling under the two classes, namely—(*a*) companies incorporated outside India which, after the commencement of the said Act, establish a place of business within India, and (*b*) companies incorporated outside India which have, before the commencement of the said Act, established a place of business within India and continue to have an established place of business within India at the commencement of the said Act The Companies Act, 1956, came into force on 1st April, 1956, hence, companies incorporated outside India whether establishing a place of business in India after 1st April, 1956 or before the said date and continuing to
at the commencement of the
those sections

Sections 592 and 593 require foreign companies to deliver certain documents and return to the Registrar, section 594 deals with accounts, section 595 with statement of name and country of incorporation, section 596 with service of notice, section 597 with office where documents to be delivered, section 598 with penalties, section 599 with its liability under contract, etc. and sections 600 and 601 with charges, etc and fees

3 Insurer having his principal place of business or domicile outside India —The expression "insurer having his principal place of business or domicile outside India' means any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India and carrying on insurance business outside India Thus, in case of a company, the expression means a foreign company and in case of an individual it means a foreigner

The word "insurer" as used in this section refers to an insurer defined in sub-section (9) (*a*) (*iii*) of section 2 of the Act [1]

4 Who establishes a place of business within India or appoints a representative in India —A foreign company is deemed to carry on business in the country when it carries on business through an agent,[2] but in a Scottish case[3] it has been said that 'company incorporated outside the United Kingdom which employs agents within the United Kingdom, but has no office here does not est blish a place of business within the United Kingdom' within the meaning of the expression 'who establishes a place of business or appoints a representative' [4] The expression "establishes a place of business' means any existing place of business and not any place where the company had at some time established its business [5] Again, where a foreign company which carried on business in a particular country but had ceased to carry on such business and continued to maintain an office there for administrative purposes could not be said to have a 'place of business' in that country [6] A company is said to have an established place of business' in that country if it has a specified or identifiable place at which it carries on business in that country [7] The requirement of an established place of business is only satisfied if the specified or identifiable habitation of the company is intended to have more than fleeting character [8] A foreign company carrying on reinsurance business only within India would bring it within the ambit of this section [9]

5 Particulars to be filed by foreign insurers —A foreign insurer establishing a place of business within India or appointing a representative in India is required to file with the Controller the following documents papers and statements

(*i*) certified copy of (*a*) the charter (*b*) statutes, (*c*) deed of settlement or (*d*) memorandum and articles of association, or (*e*) other instrument constituting or defining the constitution of the insurer,[10]

(*ii*) a list of directors when the insurer is a company,[11]

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1 *See* Notes 5 to 7 under S 2 *supra* for full discussion

2 *Guardian Assurance Co* v *Thakur Sivji Mangal* 1937 A L J 98 : 1937 All 28

3 *Lord Advocate* v *Huron and Erie Loan and Savings Co* 1911 S C 612

4 *See* Buckleys Companies Act 12th Ed p 744

5 *Dowell* v *Coast Advertising Inc* (1954) 3 All E R 360

6 *Sabatier* v *Trading Companies* (1927) 1 Ch 495

7 *Dunqua des Marchands de Moutons (Kuwait Agency)* v *Kinderley* (1951) 7 Ch 112

8 Palmers Company Law 20th Ed p 681 See *Forsikringsaktieselskabet National (of Copenhagen)* v *Attorney-General* (1925) A C 639

9 *See also* S 592 (1) (*a*) of the Companies Act 1956

10 *See also* S 592 (1)(*c*) and (2) of the said Act.

(iii) (*a*) the name and address of one or more persons resident in India and authorised to accept service of process or any notice[1], and (*b*) a copy of the power of attorney granted to him ,

(iv) the full address of the principal office of the insurer in India[2] , Sservice of notice can be effected by leaving or sending the document by post, to any established place of business of the company in India[3] ,

(*v*) a statement of the classes of insurance business to be carried on by the insurer , and

(*vi*) a statement verified by an affidavit setting forth the special requirements, if any, of the nature specified in section 62 imposed in the country of origin of the insurer on Indian nationals

Particulars of any alteration being made (*a*) in the address of the principal office or (*b*) in the classes of business to be carried on or (*c*) in any instrument, *i e*, charter, statute, deed of settlement, etc , or (*d*) in the name of any of the person, *i e*, director or person receiving service or notice , or (*e*) in the matters referred to in item (*vi*) above have to be furnished to the Controller

6 **Time within which and the language in which the particulars are to be filed** —The particulars above referred to are to be filed with the Controller within three months from the establishment of a place of business within India or the appointment of a representative in India Particulars of any alteration therein are to be furnished to the Controller forthwith

The documents, papers and statements are to be written in the Eng ish language and if the documents are not written in that language a certified translation thereof has to accompany them

Books to be kept by insurer established out side the States

64 Every insurer having his principal place of business or domicile outside India shall keep at his principal office in India such books of account, registers and documents as will enable the accounts, statements and abstracts which he is required under this Act to furnish to the Controller in respect of the insurance business transacted by him in India to be compiled and, if necessary, checked by the Controller and shall furnish to the Controller on or before the last day of January in every calendar year, a certificate from an auditor to the effect that the said books of account, register and document are being kept as required at the principal office of the insurer in India

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Books of accounts, etc to be kept at the principal office in India*
4 *Books to be kept by foreign insurer and their purpose*
5 *Certificate of an auditor to be filed*

1 *See* also S 592 (1) (*d*) of the Companies Act 1956
2 *See* also S 592 (1) (*e*) of the said Act
3 See *T O Supplies (London) v Jerry Creighton* (1952) 1 K B 42 *Desmraii v Grant Advertising Ins Co* (1955) Ch 111 *Re Naamlooze etc Wokar* (1946) 2 Ch 98 (in the latter two cases it has been said that it is not a sufficient service when the notice is served at a former place of business of the company or it has vacated office or other place of business at the date of service)

1 Legislative changes—The word "India" is substitut d by Act LXII of 1956, the word "Controller" is substituted for "Superintendent of Insurance" by Act XLVII of 1950 The words "and shall furnish to th Controller principal office of the insurer in India" were added by Act XLVII of 1950

2 Object and scope—The object of the section is to make th accounts statements and abstracts which a foreign insurer is required to make under this Act with reference to books of account, registers and documents and also to enable the Controller to check those accounts, statem nts and abstracts with relation to those books, registers and documents which should be made readily available to him if they are kept at his principal place of business in India instead of in any other place

This section enjoins on every foreign insurer who carries on insurance business in India to keep at his principal office in India such books of account, registers and documents as are required to be kept to enable him to compile the accounts statements and abstracts required of him to so compile under the Act and to furnish the same to the Controller It also enjoins on him to furnish to the Controller on or before 31st January of every cal ndar year a certificate from an auditor to the effect that those books, etc., ar being kept by the insurer at his principal office in India

Under section 594 of the Companies Act, 1956, nor under section 410 of the English Companies Act 1958, a foreign or oversea company is not required to keep any books of account, etc, at the principal office of the company as is required under this section but such company is required, in every calendar year, to make out a balance sheet, and profit and loss account in pre- scribed form including its subsidiary and to deliver three copies thereof to the Registrar

3 Books of account, etc to be kept at the principal office in India—This section enjoins on every foreign insurer carrying on any class of insurance business to keep all his books of account registers and documents at his principal office in India of which he has furnished particulars to the Controller according to clause (*d*) of section 63 He must not keep thos books in any other place in India although he has a place of business there

4 Books, etc to be kept by foreign insurer and their purpose—This section does not specifically mention what books of account, registers and documents are to be kept by a foreign insurer carrying on insurance business in India at his principal office in India What it says that he should keep those books of account registers and documents which are required to enabl him to prepare the accounts, statements and abstracts in respect of the insurance business under the Act and to furnish same to the Controller[1] The purposes for which the books of accounts, registers and documents are to be kept as directed in this section are—

(*i*) to enable the insurer to compile the accounts, statements and abstracts which the insurer is required under the Act to furnish to the Controller in respect of the insurance business transacted by him in India, and

(*ii*) to enable the Controller to check the said accounts, statements and abstracts filed with him with reference to the books of account registers and documents with reference to which the said accounts statements and abstracts were prepared

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1 For returns of foreign insurer *see* S 16 and Notes thereto *supra* *see* also Notes under S 23A for keeping of registers *under* S 14 and 43 and Notes thereto, *supra*

5 **Certificate of an auditor to be filed** —This section also enjoins a duty on every foreign insurer carrying on insurance business in India to furnish to the Controller on or before the last day of January, *i e*, 31st January, in every calendar year a certificate from an auditor The certificate of the auditor must state that the books of account, register and documents required to be kept under this section are being kept as required at the principal office of the insurer in India The auditor who is to certify as above should be an auditor as defined in section 2 (4) of the Act [1]

PART-IIA

INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND COMMITTEES THEREOF

Incorporation of the Insurance Association of India

64A (1) All insurers carrying on insurance business in India at the commencement of the Insurance (Amendment) Act, 1950, all insurers who may after such commencement begin to carry on insurance business in India and, if the Central Government, by notification in the official Gazette, so declares all provident societies carrying on insurance business in India on the date of such notification and all provident societies which may begin to carry on insurance business in India after such date are hereby constituted a body corporate by the name of the Insurance Association of India

(2) All insurers and provident societies incorporated or domiciled in India shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in India shall be known as associate members of that Association

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable and immovable, and shall by the said name sue and be sued

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Insurance Association of India, its constitution*
4 *Legal personality of the Association*
5 *Applicability*

1 **Legislative changes** —Part II A of the Act consisting of sections 64A to 64T were inserted by Act XLVII of 1950 The word "India" occurring in the section is substituted by Act LXII of 1956

2 **Object and scope** —The main object of this part of the Act as also of this section is to bring into existence a statutory body known as the Insurance Association of India which has been made a corporate body or a legal entity having a perpetual succession and a common seal with power to acquire, hold and dispose of any property either movable or immovable and it shall, by its name, sue and be sued just like any other corporate body or bodies

2. *See* Note under S 2 *supra*

This section speaks of two categories of members with whom the Insurance Association of India is to be constituted and the Association ushers into existence as a corporate body with perpetual succession and a common seal without having it to be registered by any other law as is required of any other corporate body to function as such, by virtue of the provisions of this section The Association being given the status of a body corporate it acquires a legal personality distinct from its members and that is the outstanding legal characteristic which distinguishes all corporate bodies from other forms of organisations constituted whether for profit or not

3 **Insurance Association of India , its constitution** —The Insurance Association of India shall be constituted of two categories of members The first such category of members is—

(*i*) all insurers carrying on insurance business in India at the commencement of the Insurance (Amendment) Act, 1950 ,

(*ii*) all insurers beginning to carry on the said business after the said date ,

(*iii*) all provident societies carrying on insurance business in India on the date of notification in the official Gazette made by the Central Government declaring such societies to be admitted to membership , and

(*iv*) all provident societies beginning to carry on the said business in India after the said date of the notification aforesaid

The second category of members are known as associate members They are—

all insurers and provident societies incorporated or domiciled elsewhere than in India

4 **Legal personality of the Association** —The Association has been made a legal person distinct from its members and as such it shall have perpetual succession and a common seal It shall have power to (*i*) acquire, (*ii*) hold and (*iii*) dispose of all property, both movable and immovable It can, like other corporate bodies, sue in its name or can be sued by others in the said name

5 **Applicability** —This section and the succeeding sections of this Part of the Act are not applicable to the Life Insurance Corporation of India

Entry of names of members in the register

64B (1) The Controller shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein

(2) Where any insurer or provident society has ceased to carry on business as such, the Controller shall cause steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register

SYNOPSIS

1 *Register of members and associate members, maintenance of* 2 *Controller's duty*

1 Register of members and associate members, maintenance of — This section envisages that a register of members and associate members of the Insurance Association of India has to be maintained In this register all insurers and provident societies who or which are entitled to have their names entered should be entered and the name of any insurer or provident society ceasing to carry on insurance business should be removed from such register All insurers and provident societies incorporated or domiciled outside India but carrying on insurance business in India should also be entered in the register as associate members

2 Controller's duty — This section has invested the Controller with the duty of maintaining the register of members and associate members of the Insurance Association of India He should take or cause to be taken through such agency as he thinks fit such steps as may ensure that all insurers and provident societies who are competent to become the members are entered in the register as members or to become associate members to enter their names as such members He should also take or cause to be taken like steps to remove from the said register the names of members or associate members who have ceased to carry on the insurance business in India

64C There shall be two councils of the Insurance Association of India, namely,—

Councils of the Insurance Association of India

(*a*) the Life Insurance Council consisting of all the members and associate members of the Association who carry on life insurance business in India, and

(*b*) the General Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in India

Note

The Councils — There are two wings of the Insurance Association known as the Councils, one is called the Life Insurance Council and the other the General Insurance Council The former consists of all members and associate members carrying on life insurance business in India and the latter consists of all members and associate members carrying on general insurance business

64D It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to stand as a candidate for any election held by that Council.

Authority of members of Association to act through agents.

Note

Members of the Councils can act through representatives — For the purpose of attending any meetings of the Councils concerned it will not be necessary for the members of those Councils to be present personally but they can

authorise any individual who need not be an officer of the insurer members as the representatives of such members to represent them in the meetings of the Councils Even such a representative, if so authorised, can stand as a candidate for any election held by the Council concerned

Authorities of the Life Insurance Council and the General Insurance Council

64E The authorities of the Life Insurance Council and the General Insurance Council shall be the Executive Committees, the Tariff Committee and the other committees thereof constituted in the manner provided in this part

Note

Councils to act through committees—The Life Insurance Council and the General Insurance Council act through their respective committees constituted in the manner provided in Part II-A of the Act There may be Executive Committees, the Tariff Committee and other committees of each of the Councils The authorities of these two Councils vest in their respective Executive Committees, the Tariff Committee and other committees

Executive Committees of the Life Insurance Council and the General Insurance Council

64F (1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely,—

(*a*) two officials nominated by the Central Government, one as the chairman and the other as a member ,

(*b*) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Central Government ,

(*c*) one non official not connected with any insurance business nominated by the Central Government , and

(*d*) five persons connected with life insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely,—

(*a*) two officials nominated by the Central Government, one as the chairman and the other as a member ,

(*b*) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups and from such areas as may be specified by the Central Government,

(*c*) one non-official not connected with any insurance business, nominated by the Central Government, and

(*d*) five persons connected with general insurance business nominated by the Central Government for the purpose of representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose

(3) If any body of persons specified in sub sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or General Insurance Council, the Central Government may nominate any person to fill the vacancy and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto

(4) No official nominated by the Central Government shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committees may, with the approval of the Central Government, make by-laws for the transaction of any business at any meeting of the said committee, and any such by-law may provide that any member of the committee who is interested in any matter for the time being before that committee may not be present at or take part in any meeting thereof

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto

Provided that any action taken by any of the said councils under this sub-section shall be with the previous consent of the Central Government, and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Central Government

SYNOPSIS

1 *Scope*
2 *Formation of Executive Committees*
4 *Constituencies of elected members*
3 *Central Government's power*
4 *Powers of the Executive Committee*
5 *Chairman and official member not to vote*
6 *Secretary of the Executive Committee*
7 *Council's power to form other committees*

1 **Scope**—This section lays down the method by which the Executive Committee in both the Councils is to be constituted It also empowers the Central Government to fill any vacancy caused on account of the failure to elect any member from amongst the Insurance Association The section also invests some powers on the Executive Committees, such as, to make by laws or to form any committee It also takes away the power of voting from the chairman and nominated official member It also states who is to hold the office of secretary of these committees

The observations of the Select Committee in this regard are instructive. They are quoted thus 'In our opinion insurers with head offices in India should be full members of the Councils, while other insurers should be associate members The proposed provisions in section 64F are, however sufficiently elastic to ensure that all associate members and other persons connected with insurance are adequately represented in the Councils

"Although officials are to be nominated to the Councils they should not be given the right to vote, as otherwise it might be embarrassing to the Controller in exercising his powers under the Insurance Act We have amended the proposed section 64F (4) accordingly"

2 **Formation of Executive Committees**—The Executive Committees of the Life Insurance Council and the General Insurance Council will be composed of the same number of members and the members come to form the committees of both the Councils in like manner, with the difference the elected members and nominated members will come from the two classes of insurance business Both the Executive Committees will consist of the following persons

(i) two officials nominated by the Central Government of whom one must be the chairman of the committee,

(ii) eight members of the Insurance Association of India carrying on life or general insurance business according as they are to form the Executive Committee of the Life Insurance Council or the other elected in their individual capacity in such manner from such groups of members and from such areas as may be specified by the Central Government,

(iii) one non-official not connected with any insurance business nominated by the Central Government, and

(iv) five persons connected with life or general insurance business, according as they are to compose either of the two committees nominated by the Central Government for the purpose of

representing such groups of insurers carrying on life or general insurance business, as the case may be, or such areas as has not been adequately represented in the Executive Committees concerned or for any other purpose

Thus, the Executive Committees of each of the Councils will consist of sixteen members of which eight will be elected and eight nominated by the Central Government

A Constituencies of elected members—In respect of elected members to the Executive Committee of the Life Insurance Council the constituencies of elected members are divided into two categories, namely, (i) members of the Insurance Association of India carrying life insurance business and having a premium income (gross direct premium income without premium income on re insurance accepted or ceded) in such business of more than three lakhs of rupees in the preceding calendar year of election, and (ii) those having income in the like business of less than three lakhs of rupees Four members from each of the above two categories are to be elected in the Executive Committee of the Life Insurance Council in the manner following

(*a*) Two individuals by such members having their head offices in the Calcutta area from each of the two categories aforesaid ,

(*b*) Two individuals by such members having their h ad offices in the Bombay area in case of category (i) and one individual from that area in case of category (ii) ,

(*c*) One individual by such members having their head offices in the Delhi and Madras areas alternately, the first election being held in the Delhi area in respect of category (i) but in respect of category (ii) one individual each from the Madras and Delhi areas

In respect of elected members to the Executive Committee of General Insurance Council the constituencies of elected members with regard to the Calcutta and Bombay areas are divided into two categories namely, (i) member having premium income in general insurance business exceeding ten lakhs of rupees in the preceding calendar year of election and (ii) member having income in the like business of less than ten lakhs of rupees But with regard to the Madras and Delhi areas no such category has been made Eight members are to be elected in the Executive Committee of the General Insurance Council in the manner following

(*a*) Two individuals each from the two categories mentioned above from the Calcutta area ,

(*b*) Four individuals, two each from the said two categories from the Bombay area ,

(*c*) One individual from members having head offices in the Madras area , and

(*d*) One individual from members having head offices in the Delhi area

In case of any dispute as to the area in which an insurer belongs or as to the premium income of an insurer, the Controller is authorised to decide the question and his decision shall be final He has also been authorised to cause to be published in the *Gazette of India* a list of the members and associate members of the Life Insurance and General Insurance Councils of the Insurance Association of India once every year in the month of January [1]

1 Rules 12A and 12B, Insurance Rules, 1939

3 Central Government's power —The Central Government has been given the discretionary power to nominate any person under sub-section (3) of this section to fill the vacancy occasioned on account of the failure of members of any of the constituencies and the areas aforesaid to elect any of the members to the Executive Committees of either of the two Councils The person so nominated by the Central Government shall have all the privileges of an elected member to the Executive Committees of either of the said two Councils, as the case may be, as he shall be deemed to be a member as if duly elected to the said committees

4 Powers of the Executive Committees —The Executive Committees of the Life Insurance Council and the General Insurance Council constituted as aforesaid shall have the following powers, that is to say,—

> powers to make by-laws for the transaction of any business at any meeting of the said committees providing *inter alia* that any member of the committee who is interested in any matter for the time being before that committee may not be present at or take part in any meeting thereof, but such by laws have to be made with the approval of the Central Government [1]

5 Chairman and official member not to vote —Sub-section (4) takes away the voting power of the Chairman and official member of the Executive Committee nominated by the Central Government in respect of any matter coming up before any meeting of the Executive Committees of the said two Councils, as the case may be The object is not to make it 'embarrassing to the Controller in exercising his powers under the Insurance Act' [*Select Committee*] The taking away of such voting powers has made the working of the Executive Committee as smooth sailing otherwise in a committee consisting of 16 members 8 being elected and 8 being nominated, the decisions of the committee would have been always carried by the nominated members with the casting vote of the Chairman

6 Secretary of the Executive Committee —Sub section (6) provides that the secretary of the Executive Committees of both the Councils must in each case be an official nominated by the Central Government Thus, the Executive Committee of any of the Councils has no power to elect the secretary from amongst the members although it may have such formal power to elect the chairman but to become the Chairman of the Executive Committee is a matter of option between the two nominated official members

7 Council s power to form other committees —Sub-section (5) confers discretion on the Councils, namely Life Insurance Council and General Insurance Council, to form such other committees consisting of such powers as the respective councils think fit These committees other than the Executive Committee may discharge such functions as may be delegated to them by the Executive Committee

But before forming such other committees as aforesaid the previous consent of the Central Government must be obtained by the Councils Moreover these committees other than the Executive Committee must not be vested with any power which may in any way impair the powers vested in the Executive Committees [2]

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1 For the rules framed under S 64F see S 64F(3) and S 64F post for formation of Executive Committee see S 64C(1) and

2 For formation of Executive Committees see

Resignation and filling up of casual vacancies

64G (1) Any member of the Executive Committee of the Life Insurance Council or of the General Insurance Council may resign his membership of the committee by notice in writing addressed to the chairman of the committee to that effect

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Central Government and any person so nominated to fill the vacancy shall hold office until the dissolution of the committee to which he has been nominated

(3) No act of the Executive Committee of the Life Insurance Council or of the General Insurance Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the committee concerned

SYNOPSIS

1 *Resignation of member*
2 *Casual vacancies, filling up of*
3 *Act of the Executive Committee not to be called in question*

1 **Resignation of member**—A member of the Executive Committee of either the Life Insurance Council or the General Insurance Council has the discretion to resign his membership of the committee to which he is either elected or nominated But he must do so by notice in writing and such notice should be addressed to the chairman of the committee to which he is a member and he must express his intention therein to resign from such membership

2 **Casual vacancies, filling up of**—Casual vacancies in the Executive Committee of either of the two councils may occur (i) by resignation, (ii) by death or (iii) by other reasons But such vacancies occurring by whatever reasons must be filled up by nomination by the Central Government A person so nominated must hold the office until the dissolution of the Committee to which he has been nominated

3 **Action of the Executive Committee not to be called in question**—Any act done by the Executive Committee of any of the said two Councils must not be called in question on the ground of (i) existence of any vacancy in the committee or (ii) existence of any defect in the constitution of the committee

Duration and dissolution of Executive Committees

64H (1) The duration of Executive Committee of the Life Insurance Council or the General Insurance Council shall be three years from the date of its first meeting on the expiry of which it shall stand dissolved and a new Executive Committee constituted

(2) Notwithstanding the dissolution of the Executive Committee of the Life Insurance Council or the General Insurance Council, the outgoing members thereof shall continue to hold office and discharge such administrative and other duties as may

be prescribed until such time as a new Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, shall have been constituted

SYNOPSIS

1 *Executive Committee, its duration and dissolution* 2 *Arrangement during the interim period, duties of the dissolved committee*

1 Executive Committee, its duration and dissolution—The duration of the Executive Committee of either of the two Councils shall be for a period of three years from the date of its first meeting and after that date the committee shall, automatically, stand dissolved and a new Executive Committee in accordance with the provisions of section 64F has to be constituted

2 Arrangement during the interim period, duties of the dissolved committee—Although an Executive Committee stands dissolved on the expiry of three years from the date of its first meeting the members thereof have to continue to hold office and discharge certain prescribed administrative or other duties during the *interim* period, *i e*, during the period the committee is dissolved and the period a new committee ushers in The prescribed duties of the members of the dissolved committee are—

(*a*) to keep and maintain up to date a copy of the list of all members and associate members of the Life Insurance Council or the General Insurance Council, as the case may be,

(*b*) to supervise the work of officers and servants employed by the committee,

(*c*) to collect the prescribed fees, and

(*d*) to help the chairman and the secretary to conduct the necessary elections to the new Executive Committee [1]

Power of Executive Committee of Life Insurance Council to hold examination for insurance agents

64-I The Life Insurance Council may, with the approval of the Central Government, authorise its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and, if the Central Government, by notification in the official Gazette, so declares, then notwithstanding anything contained in section 42, only individuals who have passed any such examination shall be eligible to apply for a licence under section 42

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under section 42 before the date of such notification, to act is such, or to have his licence renewed from time to time

Note

Power to hold examination of life insurance agents—The Executive Committee of the Life Insurance Council if so authorised by the latter with

[1] R 12C Insurance Rules 1939

the approval of the Central Government, has the power to hold examination for individuals wishing to qualify themselves as life insurance agents The object of holding such examinations is that only individuals who have passed any such examination shall be made eligible to apply for a licence under section 42, although no such qualification is required by a person to obtain a licence under that section But before a person can be disqualified or the Controller can refuse him a licence under that section even in spite of his complying with the requirements of the said section it must be seen that the Central Government, by notification in the official Gazette, has declared that a person would be so eligible to apply for the licence when he has passed any such examination held by the Executive Committee But a person who has been already holding a licence as such under section 42 will not be in any way affected by such notification of the Central Government Even he will be entitled to the renewal of a licence[1] It is submitted that amendment of section 42 in this regard should be made to avoid any conflict between this section and section 42 It is also to be noted that the the word "sub-section" should be read as 'section'

64J (1) The functions of the Executive Committee of the Life Insurance Council shall be—

Functions of Executive Committee of Life Insurance Council

(*a*) to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies ,

(*b*) to render advice to the Controller in the matter of controlling the expenses of insurers in respect of their life insurance business in India ,

(*c*) to bring to the notice of the Controller the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies ,

(*d*) to act in any matter incidental or ancillary to any of the matters specified in clauses (*a*) to (*c*) as, with the approval of the Central Government, may be notified by the Life Insurance Council in the *Gazette of India*

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associate members of the Insurance Association of India who carry on life insurance business

1 *See* Notes under S 42 *supra*.

Note

Functions of the Executive Committee of Life Insurance Council.—The functions of the Executive Committee of the Life Insurance Council as envisaged under this section are purely advisory Its main function is to advise and help the Controller in discharge of his duties to th insurers and in having the compliance of the requirements of the Act from them Its other function is also to advise and assist the insurers in matters such as how best to render service to life policy holders and to set up standard of conduct and sound practice in the field of the activities of insurers carrying on life insurance business It may have other functions incidental or ancillary thereto as may be notified by the Council in the Gazette with the approval of the Central Government

In the matter of rendering advice to the Controller it can advise him how best the expenses of insurers in respect of their life insurance business can be controlled In this regard it has certain duties to perform which it must perform according to the provisions of section 64K (*See post*) It can keep the Controller informed by bringing it to his notice of any insurer having acted prejudicial to the interests of life policy-holders so that he can consider if steps under section 53 (2) (*ii*) of the Act should be taken against such insurer or not

For the purpose of effectively discharging its functions the committee has the discretion to collect such sums of money either by way of fees or otherwise as may be prescribed, from all members and associate members of the Insurance Association of India who carry on life insurance business

The functions of the Executive Committee of the Life Insurance Council may be compared with the functions of such Committee of the General Insurance Council which are provided in sections 64L and 64M The functions of both the committees are more or less similar [1]

Executive Committee of Life Insurance Council may advise in controlling expenses

64K (1) It shall be the duty of the Executive Committee of the Life Insurance Council at least once before the 1st day of March in every year to advise the Controller in regard to the limits by which the actual expenses under the provisions of section 40B may be allowed in connection with business during the next following year and in giving such advice the Committee shall have regard to the classification of business made by the Controller under section 40B, the nature of the business transacted by the various insurers and such other matters as may be prescribed.

(2) Where in the opinion of the Committee the limits of expenses of management in relation to any class of business specified in the advice given by it under sub-section (1) are likely to be exceeded by any insurer, the Committee may, after giving such insurer a reasonable opportunity of being heard, administer a warning to such insurer.

(3) Where a warning has been given to an insurer under sub-section (2) and the Committee is satisfied, after such further inquiry as it may deem fit to make, that the insurer has failed to take adequate steps to secure that the limits of expenses of management specified in the advice given by it under sub-section (1) are not exceeded, the Committee may report the matter to the Controller.

[1] Section 64L

and valuation, as at such date as the Controller may specify, to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Controller, and the insurer shall place at the disposal of the said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Controller may specify.

(4) The provisions of sub-sections (1) and (4) of section 13 and of sub-sections (1) and (2) of section 15, or, as the case may be, of sub-section (2) of section 16 shall apply in relation to an investigation and valuation under this section

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Controller may specify

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Controller may take such action as may be prescribed

SYNOPSIS

1 *Scope*
2 *Duty of the Executive Committee of Life Insurance Council*
3 *Controller's power with regard to insurer contravening provisions of section 40B*

1 **Scope**—This section lays down two propositions and one is unconnected with the other In sub-section (1) it lays down the duty of the Executive Committee *vis a vis* its advice to the Controller regarding the limits of expenses of management in life insurance business to exceed the prescribed limits in a particular year, while sub sections (2) to (6)[2] lay down the powers of the Controller *vis a vis* an insurer contravening the provisions of section 40B, regarding the expenses of management Part II-A of the Act, in which this section occurs, deals primarily with the constitution and functions of the statutory body known as the Insurance Association of India Sub-section (1) of the section in defining the duties of the Executive Committee of one of its councils is well within the scope and purpose of the said Part but sub-sections (2) to (6) of this section dealing with the powers of the Controller are beyond the scope and purpose of that Part and these provisions should have found place in section 40B instead of in this section The Executive Committee of the Life Insurance Council has nothing to do with nor has it any concern with the powers of the Controller with regard to a delinquent insurer

2 **Duty of the Executive Committee of Life Insurance Council**—The duty of the Executive Committee of the Life Insurance Council as laid down in sub section (1) of this section is that it has to meet at least once before 31st March every year although it can so meet before that date

Functions of the Executive Committee of Life Insurance Council—The functions of the Executive Committee of the Life Insurance Council as envisaged under this section are purely advisory Its main function is to advise and help the Controller in discharge of his duties to the insurers and in having the compliance of the requirements of th Act from them Its other function is also to advise and assist the insurers in matters such as how best to render service to life policy holders and to set up standard of conduct and sound practice in the field of the activities of insurers carrying on life insurance business It may have other functions incidental or ancillary thereto as may be notified by the Council in the Gazette with the approval of the Central Government

Note

In the matter of rendering advice to the Controller it can advise him how best the expenses of insurers in respect of their life insurance business can be controlled In this regard it has certain duties to perform which it must perform according to the provisions of section 64K (See *post*) It can keep the Controller informed by bringing it to his notice of any insurer having acted prejudicial to the interests of life policy-holders so that he can consider if steps under section 53 (2) (*u*) of the Act should be taken against such insurer or not.

For the purpose of effectively discharging its functions the committee has the discretion to collect such sums of money either by way of fees or otherwise as may be prescribed, from all members and associate members of the Insurance Association of India who carry on life insurance business

The functions of the Executive Committee of the Life Insurance Council may be compared with the functions of such Committee of the General Insurance Council which are provided in sections 64L and 64M The functions of both the committees are more or less similar [1]

Executive Committee of Life Insurance Council may advise in controlling expenses

64K (1) It shall be the duty of the Executive Committee of the Life Insurance Council to meet at least once before the 31st day of March every year to advise the Controller in fixing under the proviso to sub-section (2) of section 40B the limits by which the actual expenses incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in life insurance business generally during that year, and he may fix different limits for different groups of insurers

(2) Where an insurer is guilty of contravening the provisions of section 40B with respect to the expenses of management, the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer

(3) Where within a period of seven years two warnings have been given to an insurer under sub-section (2) and they have been disregarded by him, the Controller may cause an investigation

1 *See* Ss 64L and 64M *post*

and valuation, as at such date as the Controller may specify, to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Controller, and the insurer shall place at the disposal of the said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Controller may specify

(4) The provisions of sub-sections (1) and (4) of section 13 and of sub-sections (1) and (2) of section 15, or, as the case may be, of sub-section (2) of section 16 shall apply in relation to an *investigation and valuation under this section*

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Controller may specify

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Controller may take such action as may be prescribed

SYNOPSIS

1 *Scope*
2 *Duty of the Executive Committee of Life Insurance Council*
3 *Controller's power with regard to insurer contravening provisions of section 40B*

1 **Scope**—This section lays down two propositions and one is unconnected with the other In sub-section (1) it lays down the duty of the Executive Committee *vis-a vis* its advice to the Controller regarding the limits of expenses of management in life insurance business to exceed the prescribed limits in a particular year, while sub sections (2) to (6) lay down the powers of the Controller *vis a-vis* an insurer contravening the provisions of section 40B, regarding the expenses of management Part II-A of the Act, in which this section occurs, deals primarily with the constitution and functions of the statutory body known as the Insurance Association of India Sub section (i) of the section in defining the duties of the Executive Committee of one of its councils is well within the scope and purpose of the said Part but sub-sections (2) to (6) of this section dealing with the powers of the Controller are beyond the scope and purpose of that Part and these provisions should have found place in section 40B instead of in this section The Executive Committee of the Life Insurance Council has nothing to do with nor has it any concern with the powers of the Controller with regard to a delinquent insurer

2 **Duty of the Executive Committee of Life Insurance Council**—The duty of the Executive Committee of the Life Insurance Council as laid down in sub section (1) of this section is that it has to meet at least once before 31st March every year although it can so meet before that

ofiner than once This meeting is intended to advise the Controller in find the limits of expenses of management by which the actual expenses incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under sub section (2) of section 40B as when such a limit is fixed by the committee an insurer, although spending more than the limits provided in sub-section (2) of section 40B but his expenses lying within the limits fixed by the committee, is protected under proviso to that sub-section from having contravened the provisions of section 40B [1]

3 Controller's power with regard to insurer contravening provisions of section 40B.—The powers of the Controller with regard to insurers contravening the provisions of section 40B, i e, exceeding the limits of expenses of management in life insurance business, have been prescribed in sub-sections (2) to (6) of this section These powers are—

(a) he should, after giving the insurer guilty of contravention of the provisions of section 40B an opportunity of being heard administer a warning to him Administration of warning is intended for the first offender or delinquent,

(b) he should also administer a second warning to him if he contravenes the provisions of section 40B for the second time thereafter,

(c) he should cause an investigation and valuation of the financial condition and liabilities of the life insurance business of the insurer who has disregarded two warnings within a period of seven years to be made by an actuary appointed by the said insurer and approved by the Controller Whereupon the insurer has to place at the disposal of the said actuary all the materials required by him within the period specified by the Controller not being less than three months and shall furnish the abstract and statement prepared as the result of such investigation and valuation within the time specified also by the Controller; and

(d) he should take such action against the insurer as may be prescribed on the receipt of the said abstract and statement [2]

4 Action against extravagant life insurers —If it appears from the report of the actuarial valuation read with the statutory reports and accounts that the insurer concerned is insolvent, the Controller may take the following actions

(i) He will cancel the registration of such insurer and request the Executive Committee of the Life Insurance Council whether the business of the insurer concerned can be reconstructed or whether some other insurer is willing to take over the business On receiving such a request the Executive Committee should meet not later than one month from the date of receipt of the said request and consider the matter and communicate its decision to the Controller within seven days of such meeting

(ii) He will apply to the court for the winding up of that insurer, if the Executive Committee is unable to meet within the said time or is unable to suggest any practical steps for the reconstruction or transfer

1 *See* Note 3 under S 40B, *supra*

2 *See* also Notes under Ss. 13 22 and 33, *supra*

But where the actuarial valuation does not disclose the insurer to be insolvent and there is an encroachment on the bonus loadings contained in the premiums due either partly or wholly to heavy expenses incurred by the insurer after giving credit for any profits made in other directions, the Controller may take the following actions, that is to say,

(i) he may request the Executive Committee of the Life Insurance Council for advice so that such encroachment may neither continue nor recur

On receipt of the said request the Executive Committee has to meet within a month of the said date and to make such recommendations as it deems fit On receipt of the said recommendations the Controller—

(ii) may issue such directions to the insurer concerned as he deems fit and if the insurer complies with such directions, the Controller has the discretion (*a*) to revive the cancelled registration wherever possible, or (*b*) to require him to be registered afresh, where revival of registration is not possible

If the directions of the Controller are not complied with, he

(*iii*) may apply to the court for the winding-up of the insurer [1]

Functions of Executive Committee of General Insurance Council

64L (1) The functions of the Executive Committee of the General Insurance Council shall be—

(*a*) to aid and advise insurers, carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance ,

(*b*) to render advice to the Controller in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses ,

(*c*) to bring to the notice of the Controller the case of any such insurer acting in a manner prejudicial to interests of holders of general insurance policies ,

(*d*) to act in any matter incidental or ancillary to any of the matters specified in clauses (*a*) to (*c*) as, with the approval of the Central Government, may be notified by the General Insurance Council in the *Gazette of India*

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be prescribed from all insurers carrying on general insurance business

1 Rule 17G, Insurance Rules, 1939

Note

The functions of the Executive Committee of the General Insurance Council as laid down in this section are more or less similar to, if not identical with, the functions of the Executive Committee of the Life Insurance Council as laid down in section 64J But certain differences may be noted thus—(i) in the matter of rendering advice to the Controller in controlling the expenses of insurers carrying on general insurance business, the Executive Committee of the General Insurance Council can advise in the matter of commission and other expenses, and (ii) in collecting fees it has the discretion to collect the prescribed fees from all insurers carrying on general insurance business

Executive Committee of General Insurance Council may advise in controlling expenses

64M It shall be the duty of the Executive Committee of the General Insurance Council to meet at least once before the 31st day of March every year to advise the Controller in fixing under the proviso to sub-section (1) of section 40C the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in general insurance business in the preceding year, and he may fix different limits for different groups of insurers

(2) Where an insurer is guilty of contravening the provisions of section 40C with respect to the expenses of management the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer

(3) Where in any case two warnings given to an insurer under sub-section (2) have been disregarded by him, the Controller may take such action against the insurer as may be prescribed

Note

The duties of the Executive Committee of the General Insurance Council are practically the same as those of the Executive Committee of the Life Insurance Council It has also to meet once at least before 31st March every year and to advise the Controller as to the limits by which the actual expenses of management may exceed the limits prescribed under sub-section (1) of section 40C in general insurance business Under this section the Controller has also been empowered to give warning to an insurer carrying on general insurance business and contravening the provisions of section 40C Where two warnings given to an insurer are disregarded the Controller may take such action against him as may be prescribed In taking such action the Controller may—

(i) cancel the registration of the insurer under the Act, and

(ii) request the Executive Committee of the General Insurance Council to consider practical steps for the reconstruction of the insurer concerned or for transferring its business to some other insurer

In the latter case the Executive Committee has to meet not later than one month of the receipt of the request from the Controller and to communicate its decision within seven days of such meeting On considering the recommendations of the Executive Committee, the Controller may—

(iii) apply to the court for the winding up of the insurer concerned if he thinks fit [1]

Power of the Executive Committees to act together in certain cases

64N The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, the Executive Committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint meetings for the purpose of dealing with any matter of common interest to both committees, and it shall be lawful for the two committees at any such joint meeting to delegate any matter under consideration for the determination of a sub-committee appointed for this purpose from amongst the members of the two committees

SYNOPSIS

1 *Joint meeting of the Executive Committees, power of convening and purpose of*
2 *Delegation of power to sub committee*
3 *Joint meeting, manner of its convening*
4 *Powers of chairmen*
5 *Business at the joint meeting*

1 Joint meeting of the Executive Committees, power of convening and purpose of—This section empowers the Central Government the circumstances, manner and the conditions under which a joint meeting of both the Executive Committees of the Life Insurance Council and the General Insurance Council can be held The purpose of such meeting of the said two committees is to deal with any matter of common interest to both the committees

2 Delegation of power to sub committee—The joint meeting of the said two Executive Committees has the power at any such joint meeting to delegate any matter under consideration for the determination of sub-committee formed for that purpose from amongst the members of the two committees On consideration of the said matter delegated to it the sub committee has to send its report to the joint meeting of the said two committees

3 Joint meeting, manner of its convening—When a request is received by the Central Government from (*a*) the Controller, or (*b*) six individuals who are members of either or both of the Executive Committees of the Life Insurance Council and the General Insurance Council, or (*c*) thirty insurers that a joint meeting of the two Executive Committees should consider a matter specified in the request, the Central Government may, on being satisfied that the matter is one of common interest to the two Executive Committees, direct that a joint meeting of the two Executive Committees be convened to consider the matter In short a joint meeting of the two

1 Rule 17H of the Insurance Rules 1939, *see* also Notes 4 and 5 under S 40C *supra*.

Executive Committees can be convened by the Central Government on requisition from the person or persons aforementioned and not *suo motu*[1]

4 **Powers of chairmen**—It shall be the duty of the chairmen of the two Executive Committees to convene, as soon as may be after the issue of the direction by the Central Government, a joint meeting of all the members of the two Executive Committees at such place and at such time and date as the two chairmen may decide[2]

5 **Business at the joint meeting**—At such joint meeting, one of the two chairmen shall be elected by the members present to preside and the matter referred to and no other matter shall be considered

The meeting may be adjourned from time to time to be held not necessarily at the same place, with the consent of the members present for further consideration of the matter or for considering a report from any sub-committee appointed for the purpose by the members present, but minutes of each meeting shall be kept and a copy thereof shall be furnished to the Controller immediately after the meeting

Power of General Insurance Council to regulate rates of insurance etc

64O (1) The General Insurance Council may, by regulations made in this behalf and approved by the Central Government, control and regulate the rates, advantages, terms and conditions that may be offered by its members and associate members in respect of general insurance business, and all such regulations shall be binding on all its members

(2) Any regulations made under sub-section (1) may delegate to a Tariff Committee, appointed for such period and consisting of such persons as may be specified in such regulations, any power of control and regulation vested in the General Insurance Council

(3) Where an insurer is guilty of contravening any regulation made under sub-section (1) by which he is bound, the Tariff Committee, if any, appointed under sub-section (2) may take such disciplinary action against him as may be prescribed[1]

(4) The Central Government may prescribe the cases in which an appeal shall lie in respect of any action taken under sub-section (3), and any such appeal shall be preferred to the Central Government within thirty days of the date on which such action was taken

(5) The General Insurance Council shall meet at least once a year to review the work done by the Tariff Committee appointed under sub-section (2)

(6) For the purpose of enabling the Tariff Committee to effectively discharge its functions under this section, the General Insurance Council may, by regulations made in this behalf and approved by the Central Government, fix the amount of fees

1 Rule 12D (1), Insurance Rules, 1939.

2. Rule 12D (2) Insurance Rules, 1939

payable by insurers carrying on general insurance business, and the Tariff Committee appointed under sub-section (2) may collect such fees either directly or through Regional Councils constituted as hereinafter provided

Explanation —For the purposes of section 64O, section 64P and section 64Q, the Central Government may, by notification in the official Gazette, specify that any insurer or class of insurers shall not be deemed to be included amongst insurers carrying on general insurance business, and any insurer so specified shall not take part in any meeting of the General Insurance Council in which any discussion of any matter dealt with in the said sections takes place

SYNOPSIS

1 *Powers of the General Insurance Council*
2 *Tariff Committee, its formation and functions*
3 *Appeal against action of Tariff Committee*
4 *Penalties for tariff breaches*
5 *Power of the Central Government—Explanation*

1 Powers of the General Insurance Council —Apart from the general powers conferred on the General Insurance Council by section 64R, it has been invested with certain particular powers under this section These powers are that—

(i) it can make regulations, with the approval of the Central Government, and through such regulations,

(ii) it has power to control and regulate the rates, advantages, terms and conditions that may be offered by its members in respect of general insurance business It may be noted that all these regulations shall be binding on all its members,

(iii) it has power to appoint a Tariff Committee and delegate to it any power of control and regulation vested in the General Insurance Council,

(iv) it has to meet at least once a year to review the work done by the Tariff Committee, and

(v) it has power by regulations approved by the Central Government to fix the amount of fees payable by insurers carrying on general insurance business

2 Tariff Committee, its formation and functions —A Tariff Committee is formed by the General Insurance Council by regulation approved by the Central Government It will be consisted of such members as may be specified in the regulations and its duration will also be indicated in the said regulations

The functions of a Tariff Committee so appointed are those powers and regulations which are delegated to it Besides it has power—

(i) to take such prescribed disciplinary action against an insurer who is guilty of contravening any regulation made by the General Insurance Council approved by the Central Government

(ii) to collect the amount of fees fixed by the General Council either directly or through Regional C

3 **Appeal against action of Tariff Committee**—An appeal shall lie in respect of any action taken by the Tariff Committee for contravening any regulations made by the Council as aforesaid The appeal shall lie to the Central Government and must be filed within thirty days from the date on which the action appealed against was taken But an appeal does not lie in every case It will lie in those cases, where the Central Government has prescribed to that effect (See *post*)

4 **Penalties for tariff breaches**—Tariff Committee after considering the nature and gravity of contravention of the regulations, take one or more of the following courses of actions against the insurer concerned

(*a*) administering a censure or warning in addition to correction of the defect or cancellation of the policy,

(*b*) imposing a fine not exceeding Rs 1,000, and

(*c*) disqualifying him for a limited period not exceeding three years from voting at any election to the Executive Committee, to the Regional Councils or to the Sectional Committees of the Regional Councils

Actions under (*b*) or (*c*) above are appealable to the Central Government[1]

5 **Power of the Central Government—Explanation**—The expression 'insurers carrying on general insurance business has, been given a restricted meaning for the purposes of this section and sections 64P and 64Q as it will not include those insurers, for the purposes of those sections, who have been specifically excluded by the Central Government by notification in the official Gazette The insurers so specified and excluded shall not take part in any meeting of the General Insurance Council in which any discussion of any matter dealt with in the said sections or in this section takes place.

64P

Regional Council

(1) The General Insurance Council may constitute such Regional Councils as and when it deems fit for one or more of the prescribed regions

(2) Each Regional Council shall consist of seven persons elected by such groups of insurers carrying on general insurance business in the region as may be prescribed

Note

Regional Councils and Committees—This section confers discretionary power on the General Insurance Council to constitute Regional Councils for one or more of the prescribed regions The regions prescribed are Bombay, Calcutta, Delhi and Madras areas For each of these areas one Regional Council is to be constituted Each Regional Council shall consist of seven persons elected by such groups of insurers carrying on general insurance business in those areas Any Regional Council so formed shall consist of seven individuals at least four of whom shall be elected by the members of the Insurance Association of India carrying on general insurance business in that area But the insurers excluded specially by notification in the official Gazette cannot take part in such election

Under any such Regional Council there shall be a separate sectional committee for each of the three classes of insurance, *viz*, fire, marine and

[1] Rule 17] Insurance Rules 1939

miscellaneous, and each such committee shall consist of seven individuals, of which at least four shall be elected by members of the Insurance Association of India carrying on that class of general insurance business in that area [1]

Functions of the Regional Councils

64Q (1) The Regional Councils shall perform such functions as may be delegated to them by the General Insurance Council.

(2) For the purpose of enabling it effectively to discharge its duties any Regional Council may in the prescribed manner constitute such committees thereof as it may think fit, whether consisting of members of the Regional Council or otherwise

(3) Where in the exercise of any functions delegated to it under this section, any Regional Council or any committee thereof restrains a principal agent or an insurance agent from procuring or causing to be procured general insurance business from any area, any such principal agent or insurance agent may appeal to the Central Government within such time as may be prescribed and the Central Government may pass such orders thereon as it thinks fit

Note

Functions of the Regional Councils—The Regional Councils derive their functions by delegation from the General Insurance Council They can constitute other committees for the purpose of enabling them effectively to discharge their duties Such committees may or may not consist of members of the Regional Council

Appeal by agents against action of Regional Council—A principal agent or an insurance agent who has been restrained by any Regional Council or any committee thereof from procuring or causing to be procured general insurance business from any area, may appeal to the Central Government within thirty days of the imposition of such restraint on him

For the purpose of disposing any appeal, the Central Government may require such information supported by documentary proof wherever possible from the agent concerned as it may require

General powers of Life Insurance Council and General Insurance Council

64R. (1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may—

(a) appoint such officers and servants as may be necessary and fix the conditions of their service ,

(b) determine the manner in which any prescribed fee may be collected ,

(c) keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India ,

1 Rule 17 I Insurance Rules

(d) with the previous approval of the Central Government make regulations for—

(i) the holding of elections other than the first elections ,

(ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum ,

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council or the General Insurance Council of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Controller ,

(iv) the levy and collection of any fees ,

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act

(2) The Life Insurance Council or the General Insurance Council may authorise the Executive Committee concerned or the Tariff Committee appointed under section 64O to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be, under clause (a), clause (b) or clause (c) of sub-section (1)

Note

Besides the powers that the Life Insurance Council and the General Insurance Council can exercise as stated in the foregoing sections This section lays down the general powers of those two councils which they can also exercise These are to appoint officers and servants with power to fix their conditions of service, to determine how the prescribed fee to be collected, to keep and maintain uptodate list of all insurers being members and associate members of the Insurance Association of India and to make regulations relating to holding of second and subsequent elections convening of meetings, determining quorum levying and collecting of fees and submitting statements or information either to the Executive Committees or to the Controller These two councils are also empowered to delegate the powers of appointing officers and servants of the procedure by which prescribed fee may be collected and of keeping and maintaining the list of insurers as aforesaid to the Executive Committee or the Tariff Committee, as the case may be

Power of Central Government to remove difficulties

64S The Central Government may exercise such powers as may be necessary for bringing the Life Insurance Council, the General Insurance Council or the Executive Committee of any of the said councils, as the case may be, into effective existence for the purpose of this Part, and any such powers shall include—

(a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the General Insurance Council,

(b) where a notification under sub-section (1) of section 64A has been issued declaring provident societies to be members of the Insurance Association, the power to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof,

(c) the power to make the provisions of section 40B applicable to the provident societies specified in clause (b) in the same manner as they apply to insurers

Note

For the purpose of removing any difficulties in bringing into effective existence of the said two councils and the Executive Committees of the said councils for the purposes of Part II A of the Act the Central Government has been empowered—

(i) to hold the first elections to the Executive Committees of the Life Insurance Council and the General Insurance Council,

(ii) to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof in terms of the notification of that Government declaring those societies also to constitute the Insurance Association of India, and

(iii) to make the provisions of section 40B applicable to the said provident societies in the same manner as they apply to insurers

Power to exempt

64T The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurer specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part

Note

This section gives discretion to the Central Government to exempt any insurer specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part, that is to say, any person who in India has a standing contract with underwriters who are members of the Society of Lloyd's may be exempted from any provisions of this Part but in exempting such insurer the Central Government has power to impose certain conditions and restrictions on him

General Note to Part III

The first Executive Committee under this Part was constituted in 1951 The main task with which the committee was concerned was to eradicate the alleged malpractices in general insurance business The committee evolved a code of conduct for observance by insurers carrying on general insurance business This code was administered by four regional administrative committees, *viz* , at New Delhi, Bombay, Calcutta, and Madras

These committees were entrusted with the following functions, amongst others—

(*a*) to investigate all complaints relating to payment of excessive commission to agents and allowance of unauthorised rebates and discounts including looking into allegations regarding deflection of business from one insurer to another through unfair means,

(*b*) to screen and register branch offices of insurers , and

(*c*) to screen and register appointments of salaried field workers of general insurers [1]

PART III

PROVIDENT SOCIETIES

Definition of provident society

65 (*1*) In this Part "provident society" means, a person who, or a body which, not being an insurer registered for the time being of persons (whether corporate or unincorporate) under Part II of this Act, carries on the business of insuring the payment, on the happening of any of the contingencies mentioned in sub-section (2), of—

(*a*) an annuity of or equivalent to one hundred rupees or less, payable for an uncertain period , or

(*b*) a gross sum of one thousand rupees or less, whether paid or payable in a lumpsum or in two or more instalments over a certain period, exclusively in both cases (*a*) and (*b*) of any profit or bonus not being a guaranteed profit or bonus

Explanation —For the purposes of this sub-section, a period is "certain" if its duration is ascertainable in advance and "uncertain" if its duration is not so ascertainable

(2) The contingencies referred to in sub-section (*1*) are the following, namely,—

(*a*) the birth, marriage or death of any person or the survival by a person of a stated or implied age or contingency ,

(*b*) failure of issue ,

(*c*) the occurrence of a social, religious or other ceremonial occasion ,

[1] *See* Insurance Year Book 1961 at p xliv

(*d*) loss of or retirement from employment ,

(*e*) disablement in consequence of sickness or accident ,

(*f*) the necessity of providing for the education of a dependant ,

(*g*) any other contingency which may be prescribed or which may be authorised by the State Government with the approval of the Central Government

(3) For the purposes of sub-sections (1) and (2)—

(*a*) contracts entered into before the commencement of this Act shall not be taken into account ,

(*b*) two or more policies issued to one person shall, for the purposes of determining whether the limits fixed by sub-section (1) have or have not been exceeded, be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one person only, whether he be the policy-holder or some other person

(4) Every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912, and every person or body of persons for the time being registered as a provident society under this Act shall be deemed to be a provident society for all the purposes of this Act

(5) If any question arises whether any person or body of persons is or is not a provident society within the meaning of this section, the Controller shall decide the question and his decision shall be final

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Life Insurance and provident insurance difference*
4 *"Provident Society", its attributes , sub-section* (1)
5 *Contingencies provided for , sub-section* (2)
6 *Business of insuring the payment, meaning of sub-section* (3)
7 *Provident society under the Act sub section* (4)
8 *Power of the Controller , sub-section* (5)
9 *Societies under the Friendly Societies Act in U K*

1 **Legislative changes** —This section was substituted with retrospective effect by Act XX of 1940 , the words "one hundred' in sub-section (1) (*a*) by Act VI of 1946 and the words 'one thousand" in sub-section (1) (*b*) by Act XLVII of 1950 The word "State' in sub-section (2) (*g*) was substituted by A O , 1950

2 **Object and scope** —The object of Part III in which this section and others following occur is to provide for better control of "Provident Societies" which undertake insurance on birth, marriage or death or on similar contingencies Provident Insurance Societies, as they were called

used to carry on a kind of insurance wherein they undertook the risk against certain contingencies specified above Such societies were regulated by the Provident Insurance Societies Act, 1912 (V of 1912) now repealed by this Act (section 123 of the Act repealed by the Repealing and Amending Act XXXVI of 1957)

This section gives a definition of "Provident Societies", provides for contingencies, prescribes the amount to be paid and explains the period when to be certain and uncertain It also brings within the fold of this Part of the Act every person or body of persons registered as a provident society under the repealed Act V of 1912 It also empowers the Controller to decide the question finally whether any person or body of persons is or is not a provident society within the meaning of this section

3 **Life insurance and provident insurance, difference**—Where the policies, like those of the maternity betrothal and marriage aid funds, issued by an insurance company to members, provide for payment of a certain sum of money whether fixed or calculated in any other manner on the happening of a contingency stipulated for, taking place during the lifetime of a member and not providing for payment of anything to the legal representatives of the member in the event of his dying without the happening of such contingency, the contract between the members and the society whether it be called a policy or a certificate or membership is not an instrument on which the payment of money is assured on the happening of the contingency depending upon human life But those, which provide for payment of some money, however small, to the legal representatives of a member in the event of his dying without the happening of such contingency stipulated, is a contract of life insurance Because in the former case the contract is based on a contingency which may never occur, whereas in the latter, it cannot possibly be said that under no circumstances is payment made upon an event, which must inevitably occur [1]

4 **"Provident Society", its attributes sub section (1)**—Sub-section (1) defines what a 'provident society" within Part III of the Act means. To be a "provident society" within the meaning of the said Part it must have the following attributes

(i) it must be a person or a body of persons, (a) such person or body of persons may be corporated or unincorporated, but (b) must not be an insurer registered for the time being under Part II of the Act,

(ii) it must carry on the business of insuring the payment of (a) an annuity of Rs 100 or less for an uncertain period, i e, when its duration is not ascertainable in advance, or (b) a gross sum of Rs 1 000 or less, paid or payable in lump or in two or more instalments over a certain period, i e, when its duration is ascertainable in advance, (c) the sum in both the cases should be exclusive of any profit or bonus not being a guaranteed profit or bonus,

(iii) the payment of the said sums must depend on the happening of any of the contingencies such as, birth, marriage or death or other contingencies mentioned in sub-section (2) hereinafter stated

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1 *In re All India Home Relief Insurance Co*, 31 S L R 416 163 I C 631 1937 Sind 113 [a decision under S. 2 (b) of the Life Assurance Companies Act 1912, also repealed by this Act].

5 Contingencies provided for sub section (2)—Sub-section (2) numerates the contingencies upon the happening of which the payment issured under sub-section (1) of the annuity or gross sum mentioned therein ecomes payable or is paid They are the following, namely—

(*a*) (*i*) the birth, marriage or death of any person, or (*ii*) the survival by a person of a stated or implied age or contingency,

(*b*) failure of issue,

(*c*) the occurrence of a social, religious or other ceremonial occasion[1],

(*d*) loss of or retirement from employment[2],

(*e*) disablement in consequence of sickness or accident[3],

(*f*) the necessity of providing for the education of a dependant[4],

This sub-section further says that the contingencies enumerated as bove are not exhaustive but that such contingencies will be deemed contingencies within the meaning of this section when such contingencies are prescribed or which the State Government with the approval of the Central Government authorise them as contingencies

6 Business of insuring the payment, meaning of, sub-section (3)—The business of insuring the payment, *i e*, the contract as envisaged under this section, and the contingencies referred to above shall not be taken into account (*a*) when such contracts are entered into before the commencement of this Act, or the limits of annuity or gross sum payable under this section shall not be deemed to exceed, (*b*) when two or more policies issued to one person might exceed the amount specified in clauses (*a*) and (*b*) of subsection (1) of this section because those policies shall be deemed to be one policy if the contingencies on the happening of which the sums are payable under the policies (whether the contingencies be the same or different) relate to one person only irrespective of whether he is the policy-holder or some other person

7 Provident Society under this Act, sub section (4)—Sub-section (4) lays down that a provident society for all the purposes of this Act shall include—

(*i*) every person or body of persons for the time being registered as a provident society under the Provident Insurance Societies Act, 1912 (V of 1912), and

(*ii*) every person or body of persons for the time being registered as a provident society under this Act

8 Power of the Controller sub-section (5)—Sub-section (5) empowers the Controller to decide any dispute which arises involving the question as to whether any person or body of persons is or is not a provident society within the meaning of this question His decision on that question has been made final

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1 For insurance against funeral expenses, see *Tofis* v *Pearl* (1915) 1 K B 18) *Hatley* v *Liverpool Victoria Friendly Society* (1918) 88 L J K B 237 *Goldstein* v *Salvation Army* (1917) 2 K B 291 *Wolenberg* v *Royal Co-operative Collecting Society*, (1915) 84 L J K B 1318

2 See *Re British Union and National* (1914) 2 Ch 77 *Re Professional Income Insurance Co*, (1929) 1 Ch. 262.

3 See *General Accident* v *Inland Revenue* (1906) 8 F 477 *Hampton* v *Yorkish Co-operative Provident Society* (1915) 1 Ch 721 *Newbold Friendly Society* v *Barlow* (1895) 2 Q B 128

4 See *Re Davies* (1892) 3 Ch 63 *Bown* v *Bown* (1918) 2 All L R 778 *Re Policy* (1927) 2 All E R 548

9 **Societies under the Friendly Societies Act in U K**—In U K. a large volume of insurance in small amount is effected with friendly societies Such societies were being controlled by statutory provisions, the earliest of such statute, the Friendly Societies Act, was passed in 1793 and was followed by numerous amending and consolidating Acts in 1875, 1896, 1908, 1924, and 1955 [1]

The societies registrable under the Friendly Societies Act, 1896, are (*a*) friendly societies, (*b*) cattle insurance societies, (*c*) benevolent societies, (*d*) working men s clubs, (*e*) old people's home societies, and (*f*) certain specially authorised societies [2]

The expression "friendly societies" has been defined in the Act as societies whose purpose is to provide by voluntary subscriptions of th members thereof, with or without the aid of donations, for—

(*a*) the relief or maintenance of members and relations during sick ness, old age, widowhood, etc ,

(*b*) insuring money to be paid on the birth of a member's child or on the death of a member, or for the funeral expenses of the husband, wife or child of a member ,

(*c*) the relief or maintenance of members when out of employment or when in distressed circumstances ,

(*d*) the endowment of members or nominees of members at any age or on marriage ,

(*e*) insurance against fire to any amount not exceeding £15 of the tools or implement of the trade or calling of members,

(*f*) guaranteeing the performance of their duties by officers and servants of the society or any branch thereof [3]

The limitations imposed by the said Act are assuring an annuity exceeding £52 per annum or a gross sum exceeding £300 together with any bonuses or additions declared upon assurances [4]

65A No person shall, after the commencement of Insur ance (Amendment) Act, 1950, begin to car on in India any business specified in su section (1) of section 65, and no provident society carrying on any such business in Indi shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is—

Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies

(*a*) public company, or

(*b*) a society registered under the Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force in any State relating to co-operative societies, or

1 *See* also the Industrial Assurance and Friendly Societies Acts 1929 and 1948 and the Amendment Act of 1953

2 S 8 of the Act of 1896 as amended by Act of 1955.

3 S 8 (1) of the Act of 1948 and S 3 (1) (*a*) of the Act of 1955.

4 S 3 of the Act of 1908 S. 8 (1) and 41 of Act of 1896 as amended by Act of 1948 *See* also S 3 (1) of the Act of 1955.

(c) a body corporate incorporated under the law of any country outside India not being of the nature of a private company

SYNOPSIS

1 *Legislative changes* 2 *Provident Societies prohibited from transacting insurance business*

1 **Legislative changes** —This section was inserted by Act XLVII of 1950 The word "India" occurring in the section was substituted by Act LXII of 1956

2 **Provident Societies prohibited from transacting insurance business** —Societies registered under the Provident Insurance Societies Act, 1912, could carry on insurance business as permitted by that Act But this section prohibits provident societies from carrying on insurance business in India unless it is a public company or a society registered under the Co-operative Societies Act, 1912, after the commencement of the Insurance (Amendment) Act, 1950, where any such society was carrying on insurance business before and at the commencement of the said Amendment Act it has to stop carrying on that business after the expiry of one year from such commencement Similar prohibition is made with regard to an insurer in section 2C [1]

Restrictions on provident societies

66 No provident society shall undertake any form of insurance not falling within the limits fixed by sub-section (1) of section 65, nor shall any provident society be eligible to be registered under section 3

Note

This section was substituted with retrospective effect by Act XX of 1940 The object of this section like the succeeding sections 67 and 69 is to put restrictions on the provident societies The restrictions imposed under this section are that such societies shall not—

(i) undertake any form of insurance except the business of insuring the payment, on the happening of the contingencies mentioned in sub-section (2) of section 65, of an annuity of Rs 100 or less payable for an uncertain period or a gross sum of Rs 1,000 payable in lump or in two or more instalments over a certain period , and

(ii) shall not be eligible to be registered under section 3 as an insurer to be able to carry on any class of insurance business in India

Similar restrictions have also been put on insurers registered under section 3 to undertake to pay on any policy of life insurance an annuity of less than Rs 100 or less or a gross sum of less than Rs 1,000 [2]

Name.

67 No provident society established after the commencement of this Act shall adopt as its name, and no provident society established before the commencement of this Act shall continue after the expiry of six months

1 *See* Notes 2 to 5 under S 2C, *supra* 2 *See* Note 2 of S 4, *supra*.

from the commencement thereof to use as its name, any combination of words which fails to include the word "provident" or which includes the word "life"

Note

This section restricts a provident society to use its name It is prohibited to use as its name any word including "life" and is made obligatory to use the word 'provident' to its name in combination with any other words Such prohibition takes effect from the commencement of the Act and where any such society was established with its name with the word 'life' but without the word 'provident' before the Act it must not continue such name after the expiry of six months from the commencement thereof Similar restriction in the use of a name of an insurer which includes the word "provident" has been made in sub-section (3) of section 5 [1]

68 [*Omitted by Act XLVII of 1950*]

69 (1) No provident society shall carry on any business upon the dividing principle, that is to say, on the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time-limits, or on the principle that the premiums payable by policy-holder depend wholly or partly on the number of policies becoming claims within certain time-limits.

Dividing business

(2) The Controller shall, as soon as possible, take steps to have any provident society which carries on business on the dividing principle wound up

Provided that, where any such provident society in existence at the commencement of this Act applies within three months of such commencement to the Controller for permission to continue carrying on its business with a view meanwhile to reorganise its business in accordance with the provisions of this Act, the Controller may at his discretion, with due regard to the past history of the society, permit the society to continue business for a period not exceeding two years from the date of receipt of such permission, so, however, that no new business on the dividing principle is undertaken by the society

(3) Where after the commencement of the Insurance (Amendment) Act, 1941, a provident society is to be wound up in pursuance of this section, or where, whether before or after the commencement of that Act, a provident society ceases to carry on business on the dividing principle, the provisions of sub-section (2) and sub-section (3) of section 52 shall, so far as may be, apply in like manner as they apply to an insurer ceasing to carry on business on the dividing principle

1 *See* Notes 3 and 4 under S 5 *supra*

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Business on dividing principle prohibited*
4 *Power of the Controller*
5 *Provident society to be wound up or ceasing to carry on business on dividing principle, procedure*

1 Legislative changes —The words "the results of a distribution of certain sums within certain time-limits" occurring in sub section (1) were substituted for the words 'the results of a distribution amongst policies maturing for payment within certain time limits of certain sums" by Act XIII of 1941 Sub-section (5) of the section was added by Act XIII of 1941

2 Object and scope —The object of the section is to prohibit a provident society from carrying on any business upon the dividing principle in the same manner as section 52 prohibits an insurer from carrying on any business of insurance upon the dividing principle

The section defines what 'dividing business' is and empowers the Controller to take steps for winding up a provident society which carries on such a business unless he permits it to continue to carry on the same for the purposes of reorganisation for a period not exceeding two years Sub section (3) also "provides in the case of provident societies for equitable winding up of insurance business on the dividing principle on the same lines as those laid down in the case of insurers "[1]

3 Business on dividing principle prohibited —The expression "business on dividing principle" means—

(i) the principle that the benefit secured by a policy is not fixed but depends either wholly or partly on the results of a distribution of certain sums amongst policies becoming claims within certain time limits , or

(ii) the principle that the premiums payable by a policy-holder depends wholly or partly on the number of policies becoming claims within certain time limits

What the provident society is prohibited under this section is to carry on its business on any of the aforesaid two principles or on both of them [2]

4 Power of the Controller —Sub-section (2) of this section makes it obligatory on the Controller to take steps for winding up any provident society found to be carrying on business on the dividing principle But when an application is made to him by a provident society in existence within three months of the commencement of the Act with a view to permit it to continue its business for the purpose of reorganising same in accordance with the provisions of the Act, the Controller has the discretion to permit the said society to continue to carry on its business for a period not exceeding two years from the date when the said permission is given In permitting it to so continue, the Controller should take into account the past history of the said society The society so permitted to continue its business would not be permitted to undertake new business during the said period covered by the Controller s permission on the dividing principle [3]

1 Notes of the Government of India , *see* also Note 3 under S 52 *supra*
2 *See* also Note 4 under S 52, *supra*
3 *Note* —No such power is conferred Controller under S 52 of the Act.

5 Provident society to be wound up or ceasing to carry on business on dividing principle, procedure —When a provident society is to be wound up in pursuance of this section, that is, steps by the Controller for such winding up have to be taken, or when it ceases to carry on business on the dividing principle whether before or after the commencement of the Insurance (Amendment) Act, 1941 (XIII of 1941), the provisions laid down in sub-sections (2) and (3) of section 52, as they apply to insurers, should be made applicable as far as practicable or so far as may be applied thereto [1]

Registration

70 (1) No provident society except a provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall receive any premium or contribution until it has obtained from the Controller a certificate of registration

(2) Every application for registration shall be accompanied by—

(*a*) a certified copy of the rules of the society, and when the society is a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under any Act repealed thereby, a certified copy of the Memorandum and Articles of Association or where the society is not such a company a certified copy of the deed of constitution of the society,

(*b*) the names and addresses of proprietors or directors, and the managers of the society, the full address of the registered office of the society, the full address of the principal office of the society in India, the name of the manager at such office, and the name and address of someone or more persons resident in India authorised to accept any notice required to be served on the society,

(*c*) a certificate from the Reserve Bank of India that the initial deposit referred to in section 73 has been made,

(*d*) a declaration verified by an affidavit made by the principal officer of the society authorised in that behalf that the minimum working capital required by section 72 is available, and

(*e*) the receipt showing payment in the prescribed manner of the prescribed fee for registration being not more than two hundred rupees

1 See Notes 6 and 7 under S 52 *supra*.

(3) The Controller may refuse to issue a certificate of registration until he is satisfied that the rules of the society comply with the provisions of this Act and that the society complies with the provisions of sections 65A, 67, 71, 72, 73 and 73A but if he is so satisfied he shall register the society and its rules

(4) The Controller may, after giving previous notice in writing in such manner as he thinks fit specifying the grounds for the proposed cancellation, and allowing the society concerned an opportunity of being heard, apply to the court and obtain sanction for cancellation of the registration made under this section or made under the provisions of the Provident Insurance Societies Act, 1912,—

(*a*) if he is satisfied from the returns furnished under the provisions of this Act as the result of an inquiry made under section 87—

(*i*) that the society is insolvent or is likely to become so, or

(*ii*) that the business of the society is conducted fraudulently or not in accordance with the rules thereof, or that it is in the interests of the policyholders that the society should cease to carry on business, or

(*b*) [*Omitted by Act* XLVII *of* 1950],

(*c*) if the society, having failed to comply with any requirement or having contravened any provision of this Act, has continued such failure or contravention, for a period of one month after notice of such failure or contravention has been conveyed to the society by the Controller

Provided that the Controller may, if he thinks fit, instead of applying for cancellation of the registration under sub-clause (*i*) of clause (*a*) of this sub-section make a recommendation to the Court that the contracts of the society should be reduced in such manner and subject to such conditions as he may indicate

Provided further that the Controller may, without previous notice and without application to the Court for sanction—

(*a*) cancel the registration of a provident society, which has failed to have its registration renewed , or

(*aa*) cancel the registration of a provident society if any deposit, required by section 73, has not been d or

(b) cancel, on such terms and conditions as he thinks fit, the registration of any provident society which applies to him for such cancellation if he is satisfied that the society has ceased to carry on insurance business and that all its liabilities in respect of insurance policies are either satisfied or otherwise provided for, or

(c) cancel the registration of a provident society if he has reason to believe that any claim upon the society arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law

(5) When a registration is cancelled the provident society shall not, after the cancellation has taken effect, enter into any new contracts of insurance, but all rights and liabilities in respect of contracts of insurance entered into by it before such cancellation takes effect shall, subject to the provisions of section 88, continue as if the cancellation had not taken place

(6) Where a registration is cancelled under clause (b) of sub-section (4) or clause (c) of the second proviso to that sub-section or because the society has failed to have its registration renewed, the Controller may at his discretion revive the registration if the provident society, within six months from the date on which the cancellation took effect, makes the deposits required by section 73, or satisfies the Controller that no claim upon it such as is referred to in the said clause (c) remains unpaid or has had an application under sub-section (3) of section 70A accepted, as the case may be, and complies with any directions which may be given to it by the Controller

(7) The Controller may, on payment of the prescribed fee which shall not exceed five rupees, issue a duplicate certificate of registration to replace a certificate lost, destroyed or mutilated, or in any other case where he is of opinion that the issue of a duplicate certificate is necessary

1 Legislative changes.
2 Object and scope
3 Certificate of registration, necessity of
Accompaniments of application for registration sub-section (2)
Refusal of certificate power of sub-section (3)
Cancellation of registration sub-section (4)
(A) Controller's power to apply to Court
(B) Controller's suo motu power to cancel
7 Effect of cancellation of registration sub-section (5)
8 Revival of registration, power of sub-section (6)
9 Duplicate certificate, issue of sub-section (7)

SYNOPSIS

1 **Legislative changes** —The words and figures "or under the Indian Companies Act, 1882 any Act repealed thereby" in sub-section (2) (*a*) were added by Act XIII of 1941 , the words "full address of the registered office on the society" in clause (*b*) of the said sub section were also inserted by Act XIII of 1941 , the words and figures "made by the principal officer in that behalf" in (*d*) therein were inserted by Act VI of 1946, the words "the receipt showing payment two hundred rupees" were substituted by the said Act of 1946 , the figures "65A, 67" in sub-section (3) were substituted by Act XLVII of 1950 and the figures "71, 72, 73 and 73A" were substituted by Act VI of 1946 , the words "from the returns or" in sub section (4) (*a*) were inserted by Act VI of 1946 , the word 'or' in sub-section (4) (*a*) (ii) and (*aa*) of second proviso to sub-section (4) were inserted by Act XLVII of 1950 , sub sections (5) and (6) were added by Act XIII of 1941 and sub section (7) was inserted by Act VI of 1946

2 **Object and scope** —The object of the section is to provide for registration of provident societies other than those registered under Act V of 1912 to have them registered under this Act to enable them to receive any premium or contribution The section also provides a complete code by which provident societies can have them registered under this Act It also provides the cases where their certificate of registration is liable to be cancelled and the circumstances in which such certificate can be revived and renewed This section also empowers the Controller in the matter of issuing, cancellation and revival of certificate to the provident societies The circumstances under which a duplicate certificate can be obtained have also been provided in this section The provisions of this section are more or less in lines with those made in section 3 providing for registration, cancellation and revival of registration of any person desiring to carry on any class of insurance business in India [1]

3 **Certificate of registration, necessity of sub section (1)** —The necessity of a certificate of registration from the Controller under this section is that without such a certificate a provident society except one registered under the provisions of the Provident Insurance Societies Act, 1912, is not entitled to receive any premium or contribution with a view to its carrying on the business of insurance as contemplated under Part III of the Act generally and in particular under section 65

The provisions of this section are not applicable to provident societies registered under the Provident Insurance Societies Act, 1912, but they are required to renew their registration in accordance with the provisions of section 70A of this Act

4 **Accompaniments of application for registration sub section (2)** —An application for registration of a provident society under this section must be accompanied by the following documents and papers

(i) a certified copy of the rules and a like copy of the deed of constitution of the society when it is not a company ,

(ii) certified copies of the Memorandum and Articles of Association, when the society is a company incorporated under the Companies Act ,

(iii) the names and addresses of its (*a*) proprietors or (*b*) directors and (*c*) managers , and full address of its principal office and the name of the manager of such office and the name and address

1 *See* Note 3 under S 3, *supra*

of one or more persons resident in India authorised to receive any notice,

(iv) a certificate from the Reserve Bank showing the initial d post made,

(v) a receipt showing prescribed fee for registration made, and

(vi) a declaration verified by an affidavit of its principal officer declaring that the minimum working capital is available

5. **Refusal of certificate, power of sub-section (3)**—The Controller has been given the discretion to refuse to issue a certificate of registration under this section when he is satisfied that a society applying for registration has not complied generally with the provisions of this Act and in particular with the provisions of sections 65A, 67, 71, 72, 73 and 73A But where there are no impediments, *i e*, where the society has complied with the provisions of the Act and particularly the provisions of the said sections and its application is otherwise in order, the Controller's duty is to register the society and its rules under this section

6 **Cancellation of registration sub-section (4)**—Sub-section (4) confers discretionary powers on the Controller to take steps for cancellation of registration of a provident society made under this section or of a provident society made under the provisions of the Provident Insurance Societies Act, 1912 On certain grounds he has to apply to the court and obtain sanction for cancellation In such a case he has to give previous notice in writing to the society concerned specifying the grounds for the proposed cancellation and also give it an opportunity of being heard in the matter On certain other grounds he has power to cancel the registration *suo motu*, without giving any previous notice to the society concerned

(A) *Controller's powers to apply to the court*—

Under the following circumstances the Controller has power to apply to the court for obtaining sanction for cancellation of the registration—

(a) when from the returns furnished or as the result of an inquiry made under section 87 he is satisfied that—

(i) the society is insolvent or is likely to become so, or

(ii) its business is conducted fraudulently or not in conformity with the rules thereof or it is in the interests of the policy holders that the society should cease to carry on business, or

(b) when the society has continued failure to comply with the provisions or requirements of the provisions of the Act or to rectify any contravention thereof for a period of one month after it was so informed by notice of such failure or contravention

In the case of the society being insolvent or is likely to become so, the Controller has the discretion to apply to the court to make a recommendation that the contracts of the society should be reduced in the manner and upon conditions as he may indicate instead of applying for a sanction for cancellation of registration

(B) *Controller's* suo motu *power to cancel*—

The Controller has the discretion to cancel the registration without previous notice to the society concerned and without applying to the court for sanction in the following cases

(*a*) where the society has failed to renew its registration ,

(*b*) where deposit under section 73 has not been made

(*c*) where a society applies to him for such cancellation in such a case the Controller, before cancelling the registration, must be satisfied—

(i) that the society has ceased to carry on insurance business , and

(ii) that all its liabilities in respect of insurance policies are either satisfied or otherwise provided for ,

(*d*) where any claim upon the society arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law

7 **Effect of cancellation of registration sub section** (5) —The effect of the cancellation of registration of a provident society is that it loses its power to enter into any new contracts of insurance after the date of such cancellation but rights and liabilities under contracts of insurance previous to the said date shall remain in force and virtue subject to the provisions of section 88, as if the cancellation in respect of pre-cancellation contracts had not taken place [1]

8 **Revival of registration, power of sub section** (6) —The Controller has also been given the discretion to revive the registration of a provident society, which has been cancelled by the Controller *suo motu* that is, he can revive its registration where within six months from the date on which the cancellation took effect the society—

(i) makes the deposits required by section 73 , or

(ii) satisfies the Controller that no claim upon it remains unpaid , or

(*iii*) satisfies him that his application under section 70A (3) has been accepted

And in all cases the society complies with any directions which may have been given to it by the Controller The Controller has no power to revive the cancellation of a registration when such cancellation is made with the sanction of the court

9 **Duplicate certificate, issue of sub-section** (7) —On payment of a prescribed fee not exceeding Rs 5, the Controller can issue a duplicate certificate of registration—

(i) to replace a certificate lost, destroyed or mutilated , or

(ii) in any other case, where he is of opinion that the issue of a duplicate certificate is necessary

10 **Prescribed fees under this section** —(i) Fee for registration is Rs 200 , and

(ii) fee for issue of a duplicate certificate of registration is Rs 3

Renewal of registration

70A (1) Every provident society registered under this Act, or under the Provident Insurance Societies Act, 1912, shall have its registration renewed annually for each period of twelve months after that ending on the 30th day of June, 1942

1 *See* Note under S 88, *infra*

(2) An application for the renewal of a registration shall be made by the society to the Controller before the 30th day of Jun preceding the period for which renewal is sought, and shall be accompanied as provided in sub section (3) by evidence of pay ment of the prescribed fee which shall not exceed two hundred rupees but may vary according to the volume of insurance busines done by the society

(3) The prescribed fee for the renewal of a registration for any year shall be paid into the Reserve Bank of India, or where there is no office of that bank, into the Imperial Bank of India acting as the agent of that bank, or into any Government treasury, and the receipt shall be sent along with the application for renewal of the registration

(4) If a provident society fails to apply for renewal of registration before the date specified in sub section (2) the Controller may, so long as he has taken no action under section 83 to have the society wound up, accept an application for renewal of registration on receipt from the society of the fee payable with the application and such penalty, not exceeding the prescribed fee payable by the society, as he may require

(5) The Controller shall, on being satisfied that the society has fulfilled the requirements of this section, renew the registration and grant it a certificate of renewal of registration

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Who shall apply for renewal sub-section (1)*
4 *Requisites of an application for renewal sub sections (2) and (3)*
5 *Late renewal and powers of Controller sub-sections (4) and (5)*
6 *Prescribed fees*
7 *Conditions of registration under the Friendly Societies Act*

1 Legislative changes—This section was added by Act XIII of 1941 and the word 'Controller' occurring in the section was substituted by Act XLVII of 1950

2 Object and scope—The object of the section is to provide for annual renewal of registration of provident societies on the same lines as section 3A does for the insurers[1]

This section lays down the procedure in accordance with which every provident society registered either under this Act or under the Provident Insurance Societies Act, 1912 (V of 1912) has to have its registration renewed annually for each period of twelve months after that ending on the 30th day of June 194[1] It also invests the Controller with certain duties in matters of renewal or late renewal of registration

1 Notes of the Government of India

3 **Who shall apply for renewal sub section (1)** —Application for renewal of registration has to be made by every provident society whether registered under this Act or registered under the Provident Insurance Societies Act, 1912, although societies registered under the latter Act need not apply for registration under the preceding section 70

4 **Requisites of an application for renewal sub-sections (2) and (3)** —The requisites of a valid application for renewal of registration are—

(i) that application must be made by the society to the Controller ,

(ii) that the application must be made before the 30th day of June preceding the period for which renewal is sought , and

(iii) that the application must be accompanied by evidence of payment of the prescribed fee, i e , the receipt granted by the Reserve Bank of India or the Imperial Bank of India (now State Bank of India) or the Government treasury according as the prescribed fee is deposited in any of the said banks or the treasury, as the case may be

5 **Late renewal and powers of Controller sub sections (4) and (5)** —The Controller has been given the discretion to accept an application for renewal of registration where a provident society fails to apply for renewal of registration before 30th June but not after the Controller has taken action under section 88 for winding up of the society Such application must also be accompanied by the prescribed fee and the Controller on receipt of the said fees and any penalty not exceeding the prescribed fee can renew the the registration On being satisfied that the society has complied with the requirements of this section, the Controller has to renew the registration and grant it a certificate of renewal of registration

6 **Prescribed fees** —The fee for renewal of registration under this section is—

(i) Rs 50 where the total gross premium income including annuity considerations, admission fees and other fees, if any, as shown in the revenue account last furnished under the Act was less than Rs 50 000 per annum , or

(ii) Rs 100, in all other cases [2]

7 **Condition of registration under the Friendly Societies Act** — For the registration of a society under the Friendly Societies Act, 1896, it must at least consist of seven members who must sign the application for registration along with the Secretary The application must be accompanied by—

(i) a copy of the rules of the society, and

(ii) a list of the names of the secretary and of every trustee or other officer appointed under the rules to sue and be sued on behalf of the society

In case of a society assuring a certain annuity it is not entitled to registration unless the tables of contributions are certified by an actuary of the National Debt Commissioners or by some other actuary approved by the Treasury [2] The affairs of these societies are controlled by the Chief Registrar and Assistant Registrars who together constitute the Central office [3]

1 R 24 (4) Insurance Rules 1939

2. Ss 9 (1) and (4) and 16, Friendly Societies Act, 1896

3 Ss 1 and 2 of the said Act

A society carrying on business in more than one part of the United Kingdom must be registered in that part in which its head office is situate but copies of the Society's rules must be sent also to the Registrars respectively of the other parts of the United Kingdom to be recorded by them [1]

Supplementary information and reports of alterations in particulars furnished with application for registration

70B (1) Every provident society registered under section 70 before the commencement of the Insurance (Amendment) Act, 1941, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Controller such particulars in addition to those already supplied for the purpose of obtaining registration as are required by sub-section (2) of section 70 of this Act as amended by the Insurance (Amendment) Act, 1941

(2) Every provident society registered under the provisions of the Provident Insurance Societies Act, 1912, shall, before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941, furnish to the Controller so far as it has not already done so the documents and informations required by clauses (*a*) and (*b*) of sub-section (2) of section 70 to accompany an application by a provident society for registration under that section

(3) When any alteration occurs or is made which affects any of the matters which are required under the provisions of sub section (2) of section 70 to accompany an application by a provident society for registration under that section, the provident society shall furnish forthwith to the Controller full particulars duly authenticated of such alteration

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Additional particulars to be furnished*
4 *Full particulars of alteration to be furnished*

1 Legislative changes —This section like the preceding one is also added by Act XIII of 1941 and the word "Controller" occurring in the section was substituted by Act XLVII of 1950

2 Object and scope —The object of the section is that it "requires full particulars as to address directors person in-charge, etc , to be supplied by provident societies already registered and provides for maintaining a correct record of such particulars" [2]

The provisions of this section apply to the provident societies registered under section 70 before the commencement of the Insurance (Amendment) Act 1941 (XIII of 1941) and those registered under the provisions of the Provident Insurance Societies Act, 1912 (V of 1912) The object of the section is obvious because certain changes had been brought about in section 70 by the said Amendment Act in respect of particulars to be furnished at the time of

1 S 11 of the said Act

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registration and hence the section purports to bring in line those provident societies registered before the said Amendment Act with those registered after the said Act In addition to the additional particulars required to be furnished this section also lays down that full particulars duly authenticated of any alteration in the said particulars has also to be furnished to the Controller

3 Additional particulars to be furnished sub sections (1) and (2) —The additional particulars required to be furnished under this section have to be furnished to the Controller before the expiration of three months from the commencement of the Insurance (Amendment) Act, 1941 The additional particulars to be furnished are—

(i) in the case of provident societies registered under section 70 before the said Amendment Act , (*a*) the full address of the registered office of the society, (*b*) the full address of the principal office of the society in India, (*c*) the name of manager at such office, and (*d*) the name and address of some one or more persons resident in India authorised to accept any notice required to be served on the society , and

(ii) in the case of provident societies registered under the provisions of the Provident Insurance Societies Act, 1912 the documents and information required by clauses (*a*) and (*b*) of sub section (2) of section 70 [1]

4 Full particulars of alteration to be furnished sub section (3) — Sub-section (3) enjoins on the provident society to furnish forthwith to the Controller full particulars duly authenticated of any alteration occurring or affecting any of the matters which are required to accompany the application for registration [2]

Certain provisions of Part II to apply to provident societies

71 The provisions of sub-sections (2) and (3) of section 10, section 20, sub-section (1) of section 27, sections 27A, 28, 29, 31A, 31B, 32, 46 and 53A shall apply to provident societies as they apply to insurers, and in such application references to shareholders of an insurer shall be construed as references to members of a provident society and references to section 7 or section 98 shall be construed as references to section 73

Provided that a provident society may charge a fee not exceeding one rupee for supplying a copy of any document referred to in sub-section (2) of section 20

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Certain provisions of Part II to apply to provident societies*

1 Legislative changes —The section was substituted by Act VI of 1946 The words and figures 'sub-sections (2) and (3) and 53A" occurring in the section were substituted by Act XLVII of 1950 and the words and figures 'and references to section 7 to section 73' were also inserted by the latter Act

1 *See* Note 4 items (i) to (iii) under S 70 2. *See* Note 4, under S 70, *supra* of the Act *supra*

2 Object and scope—The object of the section is to make certain provisions of Part II to apply to provident societies under Part III of the Act By virtue of this section the sections mentioned therein have also been made applicable to provident societies, *i e* the provisions made therein would also apply to the provident societies instead of repeating the said provisions of those sections in this Part *viz* Part III, they have been brought in to this part by means of the enactment of this section Provisions mentioned in this section as to be applicable to the provident societies mainly deal with the business of life insurance The references to shareholders in those sections are to be read as references to members when they are to be read as applicable to provident societies and references to section 7 or section 98 shall be construed as references to section 73, *i e* those sections are to be read in the context of a provident society not with an insurer carrying on life insurance business.

3 Certain provisions of Part II to apply to provident societies—The following provisions of Part II of the Act governing life insurance companies have been made applicable to provident societies under this Part

(*i*) sub sections (2) and (3) of section 10, *i e*, the provident society shall form a separate fund to be called the insurance fund and it should be kept distinct and separate from all other assets of the society and the said fund shall be as absolutely the security of the life policy holders as though it belonged to the society carrying on no other business,

(*ii*) section 20 *i e*, a printed or certified copy of the accounts, statements and abstracts to be supplied to any member of the society on his making an application for same, so also a copy of the memorandum and articles of association of the society to be supplied, for all these documents the society will not charge a fee exceeding Re 1,

(*iii*) sub-section (1) of section 27, *i e*, the society should invest its assets in Government securities, approved securities and approved investments,

(*iv*) section 27A *i e*, controlled fund to be invested in approved investments,

(*v*) section 28, *i e*, return showing the assets held invested and other particulars to be furnished to the Controller,

(*vi*) section 29, *i e*, loans or temporary advances from the funds of the society to director, manager, managing agent, actuary auditor or officer of the society except loans on policies issued by the society prohibited,

(*vii*) section 31A *i e*, the society not to be managed by a company or firm or by any person whose remuneration takes the form of commission or bonus or a share in the valuation surplus of its business

(*viii*) section 31B *i e*, the society not to pay any person remuneration on a scale disproportionate to the resources of the society,

(*ix*) section 32, *i e*, not to appoint managing agent for the conduct of its business

(*x*) section 46 *i e*, Indian law to be applied to policies issued by the society

(*xi*) section 53A, *i e*, in ascertaining the solvency or otherwise of the society no account should be taken of its unpaid share capital.

72 No provident society shall be registered unless it has a paid-up capital sufficient to provide as working capital a net sum of not less than five thousand rupees exclusive of deposits made under this Act and exclusive in the case of a company of any expenses incurred in connection with the formation of the company

Working capital

Note

The words "established after the commencement of this Act" were omitted by Act XIII of 1941

This section provides that a provident society in order that it can be registered as such under the Act must have its paid-up capital sufficient to provide as working capital a net sum of Rs 5,000 exclusive of deposits required to be made under the Act and in case of a company the said working capital must also be exclusive of expenses incidental to the formation of the company

73 (1) Every provident society shall, if established before the commencement of this Act within one year from such commencement, or if established after the commencement of this Act before the society applies for registration under section 70, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the bank for and on behalf of the Central Government, cash or approved securities amounting at the market value of the securities on the date of deposit to five thousand rupees, and shall thereafter make in each calendar year a further deposit amounting to not less than one fifth of the premium income for the preceding calendar year as shown in the revenue account of the society (including admission fees and other fees received by the society) until the total amount so deposited and kept is fifty thousand rupees

Deposits

(2) The provisions of sub-sections (8), (9), (9A), (9B) and (10) of section 7 and of sub-section (1) of section 8 and of section 9 shall apply to the deposits made under this section as they apply to deposits made by an insurer

SYNOPSIS

1 *Legislative changes*
2 *Applicability*
3 *Object and scope*
4 *Initial deposit, when to be made*
5 *Further deposits, manner of*
6 *Utilisation of the deposits*

1 Legislative changes—The words "make in each calendar year" were substituted for the words "make each year" in sub-section (1) by Act XI of 1939, and the words "premium income account of the society" in the said sub section by Act VI of 1946

The words and figures "(9A), (9B)" and and of section 9" occurring sub-section (2) were inserted by Act XX of 1940

2 Applicability—The provisions of the section apply societies established before or after the commencement of the

3 **Object and scope** —The object of the section is to provid for deposits being made by the provident societies similar to those provided in section 7 in case of insurers and for reservation of such deposits similar to those provided in section 8

This section lays down the manner in which the total amount of Rs 50,000 has to be deposited by instalments and applies to such deposits the provisions of sub-sections (8), (9), (9A), (9B) and (10) of section 7 and sub-section (1) of section 8 and of section 9 as they apply to deposits made by an insurer

4 **Initial deposit when to be made** —The initial deposit of Rs 5000 in cash or approved securities of the market value of the said sum with the Reserve Bank of India in any of its offices in India for and on behalf of the Central Government has to be deposited and to keep so deposited,—

(i) in case of a provident society established before the commencement of the Act, within one year from such commencement, and

(ii) in case of a provident society established after the commencement of the Act, before the society applies for registration under section 70

5 **Further deposits, manner of** —Further deposits subsequent to the initial deposit made as stated above have to be made thereafter in each calendar year of the sum not less than one-fifth of the premium income for the preceding calendar year as shown in the revenue account of the society including admission fees and other fees received by the society until the said total amount of Rs 50,000 is reached [1]

6 **Utilisation of the deposits** —The deposits made in accordance with sub-section (1) are not available to the provident societies for utilising same or any part thereof in discharge of their liabilities other than those arising out of policy contracts nor can they assign or charge same or any part thereof Even the deposits are not liable to attachment in execution of any decree except a decree obtained by a policy-holder and where the latter has failed to realise his dues in any other way In case any part of the said deposits is utilised for discharging the liabilities of societies they have to make good same as required by sub section (10) of section 7 In short, the deposits made in pursuance of sub section (1) of this section have to be treated in the same and like manner as the deposits made by life insurance companies under sub-sections (8), (9), (9A) and (9B) of section 7

With regard to the refund of deposits the provisions of section 9 as applicable to insurers have been made applicable to provident societies, that is, the provident societies can have the refund of the deposits (i) when they cease to carry on business in India, (ii) when their liabilities in respect of the business have been satisfied or otherwise provided for, and (iii) an application to that effect is made to the court.

Restriction on name of provident society

73A (1) A provident society shall not be registered by a name identical with that by which an insurer or another provident society in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except when the provident society in existence is in the course of being dissolved and signifies

1 *See* Notes under Ss 7 and 8 *supra*.

its consent, or the insurer in existence signifies his consent, to the Controller

(2) If a provident society, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an insurer or another provident society already in existence is registered, or so nearly resembling it so as to be calculated to deceive, the first-mentioned society shall, if called upon to do so by the Controller on the application of the insurer or the second-mentioned society, change its name within a time to be fixed by the Controller

Provided that nothing in this section shall apply to any provident society carrying on business before the commencement of the Insurance (Amendment) Act, 1946

Notes

The section was inserted by Act VI of 1946

The section is based upon the principle of the Companies Act that a name which is identical with, or too nearly resembles the name by which a company in existence has been previously registered is an undesirable name and no company shall be registered by such an undesirable name [1] Where a company seeks registration by such undesirable name, the Registrar may refuse to register it [2] Apart from it, the aggrieved company may bring a suit for injunction or other appropriate relief [3] But there could be no objection to the name where the company has been carrying on business under a particular name for a considerable time [4]

Rules. 74 (1) Every provident society shall in its rule set forth—

(*a*) the name, the object and the location of the registered office of the society ,

(*b*) the contingencies or classes of contingency on the happening of which money is to be paid ,

(*c*) the conditions to be complied with before, and the payments to be made on, admission to the society ,

(*d*) the rates of premium or contribution and the periods for which or the times at which premiums or contributions are payable ,

(*e*) the maximum amount payable to a subscriber or policy-holder ,

1 *See* S 20 of the Companies Act 1956 S 11 of the Act of 1913 and S 17 of the English Companies Act 1948

2 *R. v Registrar of Companies* (1912) 3 K. B 23.

3 *British Bata Shoe Co Ltd v Catchelovackia Bata Co Ltd* (1946) 64 Pat Cases Rep 72 *Sturtmant Engineering Co Ltd v Sturtmant Mill Co* , (1936) 3 All E R 137 , *Ewing v Buttercup Margarine Co* (1917) 2 Ch 1 , name in case of amalgamation see *Henry Head and Co Ltd v Repmet Holdings Ltd* (1952) Ch. 124

4 *Jays Ltd v Jacobs* (1933) 1 Ch 411 *See* also Notes under section 5 *supra* and the cases mentioned therein , see also section 67 regarding restriction in name of the society

(f) the nature and amounts of the benefits provided for by the society,

(g) the circumstances in which a bonus may be paid to a policy-holder,

(h) the nature of the evidence required for the proof of the happening of any contingency on which money is to be paid,

(i) the circumstances in which policies may be forfeited or renewed or whole or a part of the premiums paid on a policy may be returned, or a surrender value of a policy may be granted,

(j) the penalties for delay in paying or failure to pay premiums or contributions,

(k) the proportion of the annual income of the society which may be disbursed on and the provisions to be made for meeting the expenses of the management of the society,

(l) the person or persons who or the authority which shall have power to invest the funds of the society,

(m) the provisions for appointment of auditors and their remuneration,

(n) the procedure to be adopted in altering the rules of the society,

(o) unless these are provided for in the articles of association of a society which is a company incorporated under the Indian Companies Act, 1913 or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby,—

(i) the mode of appointment and removal, the qualification and the powers of a director, manager, secretary or other officer of the society,

(ii) the manner of raising additional capital, and

(iii) the provisions for the holding of general meetings of the members and policy-holders and for the powers to be exercised and the procedure to be followed thereat, and

(p) such other matters as may be prescribed.

(2) Where the rules of any provident society registered under the Provident Insurance Societies Act, 1912, fail to comply with

the provisions of this section the society shall, before the expiry of twelve months from the commencement of this Act, amend the rules so as to comply with these provisions

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Matters to be set forth in the rules*
4 *Prescribed matters to be set forth in the rules*

1 **Legislative changes** —The words "established after the commencement of this Act" were omitted by Act XIII of 1941 The words and figures 'or under the Indian Companies Act Act repealed thereby" occurring in clause (*o*) of sub-section (1) were inserted by Act XIII of 1941

2 **Object and scope** —The object of the section is to impose duty on every provident society to frame its own rules setting forth the matters specified in clauses (*a*) to (*p*) of sub-section (1) It also purports to bring the provident societies registered under the Provident Insurance Societies Act, 1912, into line with the provident societies registered under this Act by requiring them under sub-section (*2*) to provide for matters specified in the said clauses of sub-section (1) in their rules within twelve months from the commencement of this Act

The clauses (*a*) to (*o*) of sub-section (1) specifically mention the matters which must be set forth in the rules of every provident society Besides clause (*p*) thereof lays down that other matters than those mentioned in clauses (*a*) to (*o*) have also to be set forth in the rules when they are prescribed The Central Government has been empowered to prescribe these other matters under section 114 (*2*) (*t*) of the Act The provident society can alter its rules but the procedure to be adopted in altering its rules must be set forth in its rules

3 **Matters to be set forth in the rules** —The matters to be set forth in the rules cover a wide range They cover both the objects and the rules of guidance of business of the society These matters should be included in the rules of every provident society, amongst others such as the name and place of the registered office, the whole objects of the society, the terms of membership and the conditions under which they may become entitled to benefits, the rates of premium or contribution, the proof of claim, forfeiture, renewal or surrender of a policy, penalties for late payment or failure to pay premiums or contributions, the person authorised to invest the funds, appointment of auditors and their remuneration, procedure for altering the rules, the ratio of expenses of management , and in the case of a society being a company incorporated under the Companies Act unless they are provided in the Articles of Association, the matters to be included are appointment, removal qualification and powers of directors, manager, secretary and other officer, holding of general meeting of the members and the policy-holders and raising of additional capital

The rules under the English Friendly Societies Act, 1896, besides providing for matters aforementioned also provide in their rules other matters, such as, appointment of trustees, the powers of central body in relation to any branches the making of annual returns, holding of quinquennial valuations inspection of the books by members and parties interested in the funds, the manner in which disputes shall be settled, right of members to apply to

Registrar for an investigation into the society's affairs, voluntary dissolution and compulsory winding up and dissolution [1]

4 **Prescribed matters to be set forth in the rules**—The matters prescribed to be set forth in the rules of every provident society are—

(*i*) where a policy is applied for on the life of a person other than the person paying the premiums on such policy, the name of the person paying the premiums and his relationship to the life insured shall be inserted,

(*ii*) the disqualifications, if any, due to change of occupation, residence or other specified cause,

(*iii*) the terms upon which any policy may be kept in force for a reduced benefit without liability to payment of further premiums,

(*iv*) a statement to the effect that all policies issued after the commencement of the Act shall have clearly set out therein the matters referred to in section 68 and in clauses (*f*), (*g*), (*h*), (*i*) and (*j*) of sub section (1) of section 74 of the Act and those referred to in clauses (*ii*) and (*iii*) above,

(*v*) the method of voting at the meetings of the managing body and the number constituting a quorum,

(*vi*) a statement that no dividend shall be declared except as a result of a valuation under sub section (1) of section 81,

(*vii*) a statement that no bonus other than an interim bonus shall be declared except as a result of a valuation made in accordance with sub-section (1) of section 81 that the rate of such bonus shall not exceed that recommended by the actuary, and that no interim bonus shall be declared at a rate exceeding that approved by an actuary, and

(*viii*) a statement that the paid-up capital shall not be treated as part of the society's assets for the purpose of showing a divisible surplus at the time of any investigation made under sub-section (1) of section 81 and that where assets of the nature of organisation or preliminary expenses exceed the paid-up capital the fund shall be diminished by the amount of such excess for the purpose of ascertaining the financial condition of the society [2]

5 **Amendment of rules to comply with the provisions**—Any provident society registered under the Provident Insurance Societies Act, 1912, has been given the time by sub-section (2) of one year to comply with the requirements of this section from the commencement of the Act where its rules do not provide for those matters or where its rules fail to comply with them since the commencement of the Act [3]

Amendment of rules

75 (1) No amendment of any rule of a provident society shall be valid until it has been sent to the Controller and has been registered by him

1 S 9 (3) of the Friendly Societies Act, 1896

2 Rule 19 Insurance Rules 1939

3. For failure to comply with the provisions of this section *see* S 70 (3), *supra* and for amendment of rules *see* S 75, *infra*

(2) The Controller on being satisfied that the proposed amendment is not contrary to the provisions of this Act, shall, unless he is of opinion that the amendment unfairly affects the rights of existing members or policy-holders of the society, issue to the society an acknowledgment of the registration of the amended rule

Notes

Every provident society is permitted to amend its rules But amended rule or rules cannot have any binding effect unless and until the said amended rule or rules is or are sent to the Controller and the latter registers the same In this regard the Controller has certain duties It is not that he is bound to register any and every amendment but that he will so register the amendment when he will be satisfied that the amendment does not unfairly affect the rights of existing members or policy-holders

Under the English Friendly Societies Act no alteration of the rules is valid unless it is registered by the Registrar who has also the duty to satisfy himself that the alteration is not contrary to the Act[1] It is not competent for any person to raise objections on questions of procedure and detail in reference to any matter antecedent to the registration[2] But the duty of the Registrar to register any amended Rule under the Industrial Assurance and Friendly Societies Act, 1948, is different In this case where the Registrar is satisfied that the amendments have been made and approved by a committee, he is to register them notwithstanding that the provisions of the society's rules with regard to alterations had not been complied with[3]

Supply of copy of Rules

76 Every provident society shall on demand deliver free of cost to any member of the society a copy of the rules of the society and to any other person other than a member a copy of such rules on the payment of a sum not exceeding one rupee

Notes

This section enjoins a duty on every provident society to supply a copy of the rules to its members free of cost when a demand to that effect is made by them or any of them to it but it has no obligation to supply its rules to any non member without charging a fee not exceeding Re 1

Registered office

77 Every provident society shall have in India a principal office (on the outside of which it shall keep displayed its name in a conspicuous position in legible characters) to which all communications and notices may be addressed, and shall give notice to the Controller of any change in the location thereof within twenty-eight days of its occurrence

Notes

The words "shall have in India a principal office" were substituted for the words 'shall have an office" by Act XIII of 1941

1 S 13 of the said Act
2. *Re Queen and National Catholic Benefit and Thrift Society* (1921) 2 Ch, 318.
3. S 15 of the said Act

The principle of this section is primarily based on the principles about the location of the registered office and publication of name by companies under the Companies Act.[1] This section enjoins on every provident society to have its principal office in India to which all notices and communications are to be addressed. It also requires of it to display its name legibly and conspicuously outside the said office. Any change in the location of the principal office has to be notified to the Controller within twenty-eight days of such change. The situation of the registered office of a company determines its domicile for all purposes.[2] Displaying the name on the outside of the principal office does not mean that it should be displayed outside the compound wall of the building, it is enough if it is displayed outside the office premises.[3]

78 Where any notice, advertisement or other official publication of a provident society contains a statement of the amount of the authorised capital of the society, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up

Publication of authorised capital to contain also subscribed and paid-up capital

Notes

The principle of this section is also based on the principle laid down in section 75 of the Indian Companies Act, 1913, corresponding to section 148 of the Act of 1956 where it has been provided that where any notice, advertisement or other official publication of a company mentions the authorised capital it should also mention the subscribed and paid up capital. This provision in the Companies Act is extended to any business letter, bill-head or letter-paper of a company although not provided for by this section in case of a provident society.

79 Every provident society shall keep at its principal office in India—

Registers and books

(*a*) such registers in such form as may be prescribed,

(*b*) a cash book in which shall be entered separately for each class of contingency separately specified in section 65 all sums received and expended by the society and the matters in respect of which the receipt or expenditure takes place,

(*c*) a ledger,

(*d*) a journal.

SYNOPSIS

1 *Legislative changes* 2 *Prescribed registers*

1 Legislative changes—The words "shall keep at its principal office" were substituted for the words "shall keep at its registered office" by Act

1 *See* Ss. 72 to 74 of Indian Companies Act 1913 which correspond to Ss. 146 and 147 of the Act of 1956 *see* also Ss. 107 and 108 of the English Companies Act, 1948.

2 *Daimler Co. v. Continental Tyre etc. Co.*, (1916) 2 A.C. 307.

3 *See Ballavala Sons and Co. v. Emperor*, 43 Bom. L.R. 105 : 1941 Bom. 97.

XIII of 1941 , clause (*a*) was substituted for the original clauses (*a*) to (*d*) and original clauses (*e*), (*f*) and (*g*) re-lettered respectively as clauses (*b*), (*c*) and (*d*) by Act XIII of 1941

2 **Prescribed registers** —The following registers have been prescribed to be kept by every provident society commencing from a date not later than the 1st January, 1943, in the forms specified below or as near thereto as possible provided the information to be shown is not reduced thereby in respect of all its transactions subsisting on or after that date, namely,—

(*i*) a register of members (but not including membership merely by virtue of being a policy holder), proprietors and shareholders in Form VI A,

(*ii*) a register of directors, manager, secretary and other officers in Form VI B

(*iii*) a proposal register in Form VI-C ,

(*iv*) a register of policies in Form VI D in respect of all policies issued from a date not later than 1st January, 1943 (separate registers shall be maintained for each contingency specified in or prescribed under sub-section (1) of S 65 of the Act in respect of which the society carries on business) ,

(*v*) a premium register in Form VI E ,

(*vi*) a lapse register showing the details in respect of each policy which is treated by the society as having lapsed in Form VI F ,

(*vii*) a register of claims not including annuities in Form VI-G ,

(*viii*) a register of annuity payments in Form VI-H ,

(*ix*) a register of agents in Form VI I

Provided that —

(*a*) any register printed after this rule is made or purporting to contain the information specified in any of the registers prescribed by that rule shall be in the form prescribed therefor ,

(*b*) if any of the registers required to be kept in accordance with S 79 of the Act, as it stood before the commencement of the Insurance (Amendment) Act, 1941, is not kept, or if any of the registers so kept is exhausted, the society shall maintain forthwith the corresponding register or registers prescribed by this rule ,

(*c*) if no registers are maintained corresponding to the registers prescribed by clauses (*iii*) (*v*) and (*vi*) of this rule, the society shall, commencing from a date not later than 1st April, 1942, maintain the registers prescribed by these clauses ,

(*d*) it shall not be necessary to show the name of the life insured in addition to the policy number in the register in Form VI D, VI-E VI-F, VI-G, or VI H, if the register concerned is prepared by mechanical means

Revenue account balance-sheet and annual statement

80 (1) Every provident society shall at the expiry of the calendar year prepare a revenue account and balance-sheet in the prescribed form verified in the prescribed manner, together with a report on the general state of the society's affairs and shall cause

revenue account and balance-sheet to be audited by an auditor and the auditor shall so far as may be in the audit of a provident society have the powers of, exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on, an auditor of companies by section 145 of the Indian Companies Act, 1913

(2) Every provident society shall at the expiry of the calendar year prepare with respect to that year—

(a) a statement showing separately for each class of contingency separately specified in section 65—

(i) the number of new policies effected, the total amount insured thereby and the total premium income received in respect thereof and the number of existing policies discontinued during the year with the total amount insured thereby, and

(ii) the total amount of claims made and the total amount paid in satisfaction thereof,

(b) a statement showing details of every insurance effected on a life other than the life of the person insuring, and

(c) a statement showing the total amount paid as allowance to agents and canvassers

(3) Until the expiry of two years from the commencement of this Act this section and section 73 shall apply to provident societies registered before the commencement of this Act under the Provident Insurance Societies Act, 1912, as if the reference to the calendar year were a reference to either the financial year or the calendar year

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Forms of accounts*
4 *Duties and liabilities of auditor*
5 *Statement and certificates to accompany a balance-sheet*

1 Legislative changes—The words and figures "and section 73" occurring in sub-section (3) of this section were inserted by Act XI of 1939

2 Object and scope—The object of this section is to impose a duty on every provident society to prepare a revenue account and balance-sheet in the prescribed form at the expiry of the calendar year Such account and balance sheet must contain a report on the general state of the society's affairs This section also imposes a further duty on such society to cause the said account and balance-sheet to be audited by an auditor

After stating the duties of the provident society with respect to the revenue account and balance sheet it lays down in sub-section (1) the functions the duties and liabilities of an auditor auditing the said accounts He has been

entrusted with the same duties and has been made subject to the same liabilities as an auditor, under S 145 of the Companies Act, 1913, corresponding now to S 227 of the Companies, Act 1956, has and is subject to Sub section (2) lays down the various statements to be made with respect to the year of the accounts and the different items to be included in those statements Sub section (3) intends to give the societies time to change the *system of accounting from* one to the other specially to those registered before the commencement of this Act under the Provident Insurance Societies Act, 1912 (V of 1912) The year of accounting under this Act is calendar year and not the financial year

3 **Forms of accounts and statements** —The revenue account and balance sheet of a provident society shall be prepared in accordance with Forms VII and VIII respectively, and in their completion regard shall be had to the notes appended thereto If it so desires, a provident society may submit a profit and loss account in addition to a revenue account and balance-sheet A statement of the particulars of the gross premium income for each class of contingency for which the net premium income is shown separately in the revenue account may be prepared in Form VII A [1] The statement required under clauses (*a*) (i) and (*b*) of S 80 (2) shall be prepared in accordance with Forms IX and X respectively [2]

4 **Duties and liabilities of the auditors** —Sub-section (1) lays down that the auditor in auditing the accounts and balance sheet of a provident society shall have the powers of an auditor appointed under the Companies Act He shall also exercise the functions vested in, and discharge the duties and be subject to the liabilities imposed on the latter under the said Act Section 227 of the Companies Act, 1956[3] empowers the auditor appointed under that Act (i) to require from the officers of the company all informations and explanations necessary for the performance of his duties, and (ii) to have access to the books and accounts and vouchers of the company His duties under that section are to make a report to the members of the company on the accounts examined by him and his report must state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the required informations and also give a true and fair view of the state of the company's affairs [4]

5 **Statement and certificates to accompany a balance-sheet** —The following statement must be appended to the balance sheet of a provident society, namely, a statement showing separately for every asset, the full title and particulars of the asset and its value

Besides the statement a balance-sheet must be accompanied by the following certificates, namely, (i) a certificate certifying that the values of all the assets have been reviewed as at the date of the balance sheet and the assets set forth therein are shown in the aggregate at amounts not exceeding their realisable or market value under each of the several headings, such as, "Loans", "Investments", "Agents", etc , and (ii) a certificate signed by the auditor certifying that he has verified the cash balances, the loans and investments [5]

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1 R 20 (1) and (2) Insurance Rules 1939
2 R 20 (3) of the said Rules
3 Sec 145 of the previous Act and *see* also S 167 of the English Companies Act 1948
4 *See* Note 3 under S 2 and Notes 4—6 under S 12 *supra*
5 For discussion on revenue account *see* Note 8 and on balance-sheet Notes 6 and 10, and for authentication of balance sheet *see* Note 10 under S 11 *supra*

Actuarial report and abstract

81 (1) Every provident society shall once in every five years or at such shorter intervals as may be laid down by the rules of the society cause an investigation to be made as at the last day of a calendar year into the financial condition including the valuation of its liabilities and assets by an actuary

(2) The report of the actuary shall contain an abstract in which shall be stated—

(a) the general principles adopted in the valuation including the method by which the valuation as of lives was ascertained,

(b) the rate at each age of the mortality and any other factor assumed and the annuity values used in valuation,

(c) the reserve values held against policies effected,

(d) the rate of interest assumed, and

(e) the provision made for expenses,

and shall have appended to it a certificate signed by a principal officer of the society that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to the actuary for the purpose of the investigation

(3) If the actuary finds that the financial condition of the society is such that no surplus exists for distribution as bonus to the policy-holders or as dividend to the shareholders, he shall state in his report whether in his opinion the society is insolvent and if so, whether it should be wound up or not, and the extent to which in his opinion existing contracts should be modified or existing rates of premium should be adjusted to make good the deficiency in the assets

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Contents of actuarial report and its preparation*
4 *Contents of the actuarial abstract*
5 *Actuarial investigation in the midst of a year*
6 *Actuarial report in case of no surplus existing*
7 *Certificate to accompany the report*
8 *Annual audit and quinquennial statement of affairs of English Societies*

1 **Legislative changes**.—The words 'as at the last day of a calendar year' occurring in sub-section (1) were inserted by Act VI of 1946

2 **Object and scope**.—The object of the section is to impose a duty on every provident society to cause to be made an investigation into its financial condition including the valuation of its liabilities and assets by an

actuary once in every five years or at such shorter intervals as may be laid down in its rules Such valuation is known as quinquennial actuarial valuation Its purpose is that by such valuation the financial condition as to whether its business is prospering or is declining can be ascertained

' ' ' The section lays down what the actuarial report and abstract should contain It casts duties on the principal officer of the society to place all material necessary including full and accurate particulars of every policy under which there is either any actual or contingent liability at the disposal of the actuary Certain duties have also been imposed on the actuary and the most important of them is that he is to state whether the society is insolvent and in that case he is to suggest further whether (i) the society should be wound up, or (ii) the existing contracts should be modified, or (iii) the rates of premium should suitably be adjusted

3 **Contents of actuarial report and its preparation** —The report of the actuary has to be prepared, so far as practicable, in accordance with the regulations and requirements contained in the Fourth Schedule to the Act, but it shall not be necessary to supply a consolidated revenue account in Form G, a statement in Form DDD of additions to and deductions from policies and a Statement in Form DDDD of particulars of policies forfeited or lapsed

The report shall contain in the appropriate places the information required in clauses (*a*) to (*e*) of sub-section (*2*) of this section It must state—

(i) the proportion of the renewal premium income spent in payment of commission and other expenses in each year during the period since the last investigation after allowing as the cost of the new business of the year, 7½ per cent of single premiums and 90 per cent of first year's premiums falling due in the year, after deduction of those unpaid under policies allowed to lapse in the year, and

(ii) whether he has taken steps to prevent the policy reserve values from being less than the minimum surrender values

The report shall contain a statement that in no case where a policy has been written off as a lapse does there exist any further liability actual or contingent and must have appended to it a certificate as prescribed in sub-section (2) of this section [1]

4 **Contents of the actuarial abstract** —The actuarial abstract is contained in the report of the actuary Such abstract must contain the following

(i) the general principles adopted in the valuation and how the valuation age of lives was ascertained,

(ii) the rate at each age of the mortality and the annuity values used in valuation,

(iii) the reserve values held against policies effected,

(iv) the rate of interest assumed, and

(v) the provisions made for expenses

1 R 21, Insurance Rules 1939.

5 Actuarial investigation in the midst of a year—Where an investigation into the financial condition of a provident society is made as at a date other than the expiration of the year of account, the accounts for the period since the expiration of the last year of account and the balance-sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by the Act and the rules made under the Act [1]

6 Actuarial Report in case of no surplus existing—Where the actuary, as a result of his investigation made under this section, finds that the financial condition of the society under his report is such that there exists no surplus available for distribution as bonus to the policy-holders or as dividend to the shareholders, he must state his opinion in the report whether the society is insolvent When he states that the society is insolvent he must also state his opinion whether

(i) the society should be wound up or not, or

(ii) its existing contracts should be modified and the extent to which such modifications can be made, or

(iii) its existing rates of premiums should be adjusted to make good the deficiency in the assets

7 Certificate to accompany the report—In the report of the actuary a certificate has to be appended Such certificate must be signed by a principal officer of the society It must certify that all material necessary for proper valuation has been placed at the disposal of the actuary and that full and accurate particulars of every policy under which there is a liability either actual or contingent have been furnished to him for the purpose of the investigation

8 Annual audit and quinquennial statement of affairs of English societies—Societies registered under the Industrial Assurance and Friendly Societies Act 1948, have to get their accounts audited once at least in every year by one of the approved auditors appointed under the Act The auditor's report may be either general or special It is general when the account is found as correct and it is special when it is found to be incorrect In the latter case the auditor has to send his report to the Registrar [2]

Such societies have also to cause to be made once at least in every five years, a statement showing its assets and liabilities and the benefits assured and contributions receivable from members Such statement may either be made by a valuer appointed by the society or by the society itself In the latter case the Registrar shall cause the assets and liabilities to be valued and reported by some actuary [3] But societies registered under the Friendly Societies Act, 1896, have simply to send to the Registrar, once in every year, a return of receipts and expenditures, funds and effects made as at 31st December [4]

Submission of returns to Controller

82 (1) The revenue account and balance sheet with the auditor's report thereon and the report on the general state of the society's affairs referred to in sub-section (1) of section 80, shall be printed and four copies of these and of the statements referred to in sub-section (2) of section 80, shall be furnished as returns to the Controller

1 See Notes under S 80 *supra*.
2 Ss 26 and 27 of the said Act
3 S 28 of the said Act
4 S 27 (1) and (2) of the said Act; see also Notes under S 13, *supra*

within six months from the end of the period to which they relate

(2) All the materials necessary for the proper valuation of the liabilities of the society under the provisions of section 81 shall be placed at the disposal of the actuary within three months from the end of the period to which such material relates, and the report and abstract referred to in section 81 shall be furnished as a return to the Controller within a further period of three months

Provided that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months

(3) The provisions of sub-section (2) of section 15 relating to the copies therein referred to shall apply to the returns referred to in sub section (1) of this section, and the provisions of section 17 shall apply to the accounts and balance-sheet of a provident society being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, as they apply to the accounts and balance-sheet of an insurer and the Controller may exercise, in respect of returns made by a provident society and in respect of an investigation or valuation to which section 81 refers, the same powers as are exercisable by him under section 21 and section 22, respectively, in the case of an insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Returns, what are ?*
4 *Period within which they are to be filed*
5 *Power of the Central Government to extend time*
6 *Authentication of the accounts and report*
7 *Exemptions of companies incorporated*
8 *Powers of the Controller*

1 **Legislative changes** —The words "shall be printed referred to" occurring in sub-section (1) were substituted for the words "and the statement referred to" by Act XIII of 1941, the words "within six months" occurring in the said sub section were substituted for the words "within three months' by the said Act, and the words "and copies of the revenue account and balance sheet and the auditor's report thereon and of the report on the general state of the society's affairs shall, on the application of any member or policy-holder made within two years from the date on which the document was so furnished, be sent to him within fourteen days from the receipt of the application on payment of a fee of one rupee" were omitted from the said sub-section by Act VI of 1946

The proviso to sub-section (2) was added by Act XLVII of 1950 The words "the provisions and" in sub-section (3) were inserted by Act XIII of 1941 The words and figures "sub-section (1) of this section" occurring in sub section (3) were substituted by Act XXV of 1942, the

accordance with the provisions of this section, it may at the same time send to the Registrar copies of such balance-sheet and accounts; and where such copies are so sent it shall not be necessary for the company to file copies of the balance-sheet and accounts with the Registrar as required by section 220 of the Companies Act, 1956 (section 134 of the previous Act) and such copies so sent shall be chargeable with the same fees and shall be dealt with as if they were filed in accordance with that section [1]

8 **Powers of the Controller**—Sub-section (3) confers on the Controller with regard to the returns furnished to him by the society under sub-sections (1) and (2) of this section the same powers as have been conferred on him in respect of returns furnished to him by insurers under sections 21 and 22 That is, the Controller has the power in case of inaccurate or defective returns to require such further information from the society, to call upon it to submit for his examination any book of account, register or other document, to examine any officer of the society on oath and decline to accept those returns unless the inaccuracy has been corrected or the deficiency has been supplied He has also the power to order revaluation [2]

Actuarial examination of schemes

83 (1) Every provident society, registered after the commencement of this Act, shall cause every scheme of insurance which it proposes to put into operation, and every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall cause any scheme which it proposes to put into operation for the first time after such commencement to be examined by an actuary, and shall not receive any premium or contribution in connection with the scheme until the actuary has certified that the rates, advantages, terms and conditions of the scheme are workable and sound and such certificate has been forwarded to the Controller

(2) The provisions of sub-section (1) shall apply to any alteration of a scheme already in operation but the Controller may if he is of opinion that the alteration unfairly affects the interests of existing policy-holders, prohibit the alteration, and, if he does so, the society shall not put the altered scheme into operation, unless it first discharges to the satisfaction of the Controller all its liabilities to those of the existing policy-holders who dissent from the alteration

(3) Every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, shall, as soon as may be and in any event before the expiry of six months from the commencement of this Act, submit all schemes of insurance which the society has in operation at the commencement of this Act to examination by an actuary and shall, before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941, send the report of the actuary thereon to the Controller

1 S 17 *supra*

2. *See* Ss 21 and 22 and Notes thereto, *supra*.

(4) The report of the actuary shall state in respect of each scheme whether the rates, advantages, terms and conditions ar workable and sound and where no actuarial report such as is referred to in section 81 has been made within two years preceding the examination, the report shall also state whether the assets of the society are sufficient to meet its liabilities under the existing schemes, and, if not, how in the opinion of the actuary th existing contracts should be modified

(5) If the rates, advantages, terms and conditions of any scheme are not reported by the actuary to be workable and sound, he Controller shall give notice to the society prohibiting the scheme, and the society shall not after its receipt of such notice enter into any new contract of insurance under the scheme, but all rights and liabilities in respect of contracts of insurance entered into by the society before receipt of the notice shall, subject to the provisions of sub section (6), continue as if the notice had not been given

(6) Where a scheme is prohibited under the provisions of sub-section (5) the society shall, where its assets are sufficient to meet all existing liabilities, set apart out of its assets the sum sufficient in the opinion of the actuary to meet the liabilities incurred under the scheme so prohibited and, where its assets are not so sufficient, within three months from the date of the prohibition, apply to the Court for a modification of its existing contracts or failing such modification for the winding up of the society

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Scheme to be examined by an actuary sub-section* (1)
4 *Alteration of scheme and Controller's power sub-section* (2)
5 *Societies registered under Provident Insurance Societies Act, 1912—applicability of sub section* (3)
6 *Contents of the actuary's report sub section* (4)
7 *Controller's power to prohibit the scheme sub-section* (5)
8 *Prohibition of scheme, its effect sub section* (6)

1 **Legislative changes**—The word "registered" in sub-section (1) was substituted for the word "established" by Act XIII of 1941, the words "shall cause any scheme for the first time" in same sub-section were substituted for 'shall cause any new scheme which it proposes to put in operation" by the said Act and the words "that the rates, advantages sound were substituted for the words "that the scheme is sound also by the said Act.

The words and figures "and shall, before report of the actuary" occurring in sub-section (3) were substituted for the words "and shall send the report of the actuary' by Act XIII of 1941

The words the rates advantages and sound" occurring in sub section (4) were substituted for the words it is actuarially sound' by Act XIII of 1941

Sub-section (5) was substituted by Act XIII of 1941

The word "prohibited" occurring in sub-section (6) was substituted for the word "discontinued" and the word "prohibition" occurring therein was substituted for the word "discontinuance" by Act XIII of 1941

2 **Object and scope**—The object of the section is to safeguard the rights of policy holders and members of a provident society from being jeopardised by putting into operation any scheme in its venture This object is achieved by making obligatory provisions in this section enjoining on every provident society to submit its schemes for examination by an actuary This section also prohibits every such society from receiving any premium or contributions from policy-holders or members before the scheme is certified by the actuary In its application this section makes no distinction between an existing society and one proposed to be registered after the Act has come into force except with a slight variation in the procedure The provisions are equally applicable to cases where the society proposes to make any alteration in any existing scheme The Controller is empowered in this regard not to allow the alteration if such alteration acts detrimentally to the interests of the policy-holder or when the latter objects to same Where a scheme is found to be unsound actuarially the Controller has power to prohibit further operation of the scheme

3 **Scheme to be examined by an actuary**—Sub-section (1) makes it obligatory on every provident society to cause every scheme of insurance which it proposes to put into operation to be examined by an actuary and prohibitory on it in receiving any premium or contribution in respect of the said proposed scheme until before the actuary has certified to the effect that the rates, advantages, terms and conditions of the said scheme are workable and sound and the actuary's certificate has been forwarded to the Controller In the application of the provisions of this sub-section the difference between the societies registered after the commencement of this Act and those registered before such commencement under the provisions of the Provident Insurance Societies Act, 1912, lies in this that in the case of the former, they have to have their schemes proposed to be put into operation, and in the case of the latter, they have to have their schemes proposed to be put into operation for the first time, to be examined by an actuary The societies existing at the date of the commencement of the Act but registered under Act V of 1912 need not cause any of its schemes of insurance in existence at the said date to be examined by an actuary It is only when they bring out a scheme which they propose to put into operation for the first time after the commencement of this Act that they are required to have the said scheme to be examined by an actuary But the provisions in this regard in this sub-section have to be read subject to the provisions in sub-section (3) of this section

4 **Alteration of scheme and Controller's power sub-section (2)**—Where any alteration of a scheme already in operation is intended to be made, the society has also to cause the said alteration of the scheme which it proposes to put into operation to be also examined by an actuary and until he certifies that the rates, advantages, terms and conditions in the altered scheme are workable and sound and his certificate has been sent to the Controller, the society has to refrain itself from receiving any premium or contribution on the basis of the altered scheme

Sub-section (2) also confers discretionary powers on the Controller with regard to such alteration of the scheme which is already in operation His powers in this regard are that (1) he can prohibit the alteration when he is

satisfied that the proposed alteration in the existing scheme affects uniformly the interests of the existing policy-holders, or (ii) he can call upon the society to discharge all its liabilities to those of the existing policy-holders who dissent from the alteration. Such discharge of liabilities should be made to the satisfaction of the Controller. When the Controller issues the prohibitory order under this sub-section to any such society it shall not put the altered scheme into operation unless the liabilities of the dissentient policy holders are fully discharged to the satisfaction of the Controller

5 **Societies registered under the Provident Insurance Societies Act 1912—Applicability of sub-section (3)**—Sub-section (3) lays down that every provident society registered before the commencement of this Act under the provisions of the Provident Insurance Societies Act, 1912, has to submit all schemes of insurance which have been in operation at the said date to examination by an actuary. Such examination by an actuary has to be made as soon as practicable and in any case, before the expiry of six months from the commencement of this Act. Such society has also to send its report of the actuary on the examination of the said schemes, to the Controller before the expiration of six months from the commencement of the Insurance (Amendment) Act, 1941 (XIII of 1941).

6 **Contents of the actuary's report sub-section (4)**—Sub-section (4) lays down what the report of the actuary should state in respect of the schemes examined by him submitted for such examination. The report shall state—

(i) whether the rates, advantages, terms and conditions in respect of the scheme examined are workable and sound and if not, how far; and where no actuarial report and abstract has been made within the two years preceding the examination;

(ii) whether the assets of the society are sufficient to meet its liabilities under the existing schemes and, if not, how far; and

opinion the existing contracts should be modified.

7 **Controller's power to prohibit the scheme sub section (5)**—Sub-section (5) empowers the Controller, in mandatory language to prohibit any scheme to be put into operation or to continue its operation by giving notice to the society where the rates, advantages, forms and conditions of such scheme are reported by the actuary to be unworkable and unsound. It is also the duty of the society, on receipt of such notice from the Controller, not to enter into any new contract of insurance entered into by the society before the receipt of the said notice from the Controller would continue as if no notice had been given. Such rights and liabilities are, however, subject to the provisions of sub-section (6) of this section, that is to say, that such contracts may be modified in case the society's assets are not sufficient to meet its liabilities.

8 **Prohibition of scheme its effect sub-section (6)**—Where a scheme is prohibited by the Controller under the provisions of sub-section (5) where the rates advantages terms and conditions of the scheme are not reported by the actuary to be workable and sound, the effects of such prohibition are twofold namely —

(a) where the society's assets are sufficient to meet all existing liabilities it must set apart out of its assets the sum sufficient in the

1 *See also Note 3 supra*

opinion of the actuary to meet the liabilities incurred under the scheme so prohibited, and

(ii) where its assets are not so sufficient, it must (*a*) apply to the court for a modification of its existing contracts, or (*b*) failing that it must apply to the court for the winding up of the society.

In both the cases the society has to apply to the court within three months from the date of prohibition.

84. Where a provident society effects policies of insurance in connection with more than one of the classes of contingency separately specified in sub-section (2) of section 65, the receipts and payments in respect of each such class shall be recorded in a separate account in the cash book kept in accordance with section 79

Separation of accounts and funds

Notes

The words and figures "sub section (2) of" were inserted by Act XX of 1940. This section enjoins on every provident society effecting policies of insurance in more than one class of the contingencies mentioned in sub-section (2) of section 65 to keep separate account of each such class in its cash book which it has to keep in accordance with clause (*b*) of section 79 The accounts should relate to the receipts and payments in respect of each class of the contingencies Such form of book-keeping would indicate the financial position of each class of them at a glance which could not be so ascertained if the accounts of different classes are mixed up The marginal note indicates separation of funds also but the section is silent about the separation of funds.[1]

85. (1) [*Omitted by Act XLVII of 1950*]

Investment of funds

(2) No funds or investments of a provident society except a deposit made under section 73 or under the law of any State or country relating to insurance shall be kept otherwise than in the name of the society or in the name of a public officer approved by the Central Government

(3) No loans shall be made out of the assets of a provident society to any director, manager, managing agent, auditor, actuary, officer or partner of the society, except on the security of a policy of insurance held in the society and within its surrender value and no such loan shall be made to any concern of which a director, manager, managing agent, actuary, officer or partner of the society is a director, manager, managing agent, actuary, officer or partner

Provided that nothing in this sub-section shall apply to loans made by a provident society to a banking company

Provided further that where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan would have made such grant a contravention

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1 *See* Sub-section (2) of S 10 *supra*

of this sub-section, such loan shall, notwithstanding any contract to the contrary, be repaid within three months from the occurrence of such event or from the commencement of the Insurance (Amendment) Act, 1946, whichever is later, and in case of default, the director, manager, auditor, actuary or partner concerned shall, without prejudice to any other penalty which he may incur, cease to hold office in the society on the expiry of the said three months

(3A) Any loan prohibited under sub-section (3) made before and outstanding at the commencement of the Insurance (Amendment) Act, 1940, shall be repaid before the 1st day of January, 1941, and in case of default the director, manager, managing agent, auditor, actuary, officer or partner who has received the loan or is connected with the concern which has received the loan, as the case may be, shall cease to hold office in or be a partner of the society and shall be ineligible to hold office in or be a partner of the society until the loan is repaid

(4) Any director, manager, managing agent, auditor, actuary, officer or partner of a society which contravenes the provisions of sub-section (3), who is knowingly a party to the contravention, shall without prejudice to any other penalty which may incur be jointly and severally liable to the society for the amount of the loan, and such amount, together with interest from the date of the loan at such rate not exceeding twelve per cent per annum as the Controller may fix, shall on application by the Controller to any Civil Court of competent jurisdiction be recoverable by execution as if a decree for such amount had been passed by that Court

(5) The provisions of section 86D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of a provident society being a company if the loan is one granted on the security of a policy on which the society bears the risk and the policy was issued to the director on his own life and the loan is within the surrender value of the policy

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Funds or investments how to be kept sub section (2)*
4 *Prohibition of loan sub section (3)*
5 *Non repayment of loan, effect of sub-section (3A)*
6 *Liability of director and other officers contravening provisions regarding loan sub-section (4)*
7 *Loan to director, where permissible sub-section (5)*
8 *Application of funds under the English Act*

1 **Legislative changes**—Sub-section (1) of this section was omitted by Act XLVII of 1950

The said sub-section ran as follows

"Every provident society shall, unless it already holds invested in approved securities or securities mentioned or referred to in clauses (c) and (d) of section 20 of the Indian Trusts Act, 1882, not less than fifty per cent of the total assets of the society, invest in such securities every increase that takes place in those assets and in that part of those assets which is held in cash as soon as practicable after the increase takes place and in any case within six months of its taking place, until the total amount so invested amounts to not less than fifty per cent of the total assets of the society and shall thereafter keep invested in such securities not less than fifty per cent of the total assets of the society

Provided that for the purpose of determining the amount to be invested under this sub section any deposit made in cash under section 73 shall be taken into account as if such cash were Government securities amounting at the market value of the securities on the date the deposit was made to the total deposited in cash"

The words "or under the law relating to insurance" and the words 'or in the name of Central Government" occurring in sub-section (2) were respectively inserted by Act VI of 1946 and added by Act XI of 1939

The words "any director society" and the words "a director, manager or partner" occurring in sub-section (3) were respectively substituted for the words "any director or officer of the society" and "a director or officer of the society is a director or partner" by Act XX of 1940

The provisos to sub-section (3) were added by Act VI of 1946

Sub-section (3A) was inserted by Act XX of 1940

The words "manager managing agent partner' in sub-section (4) were substituted for the words 'or officer," by Act XX of 1940 and the word 'Controller" occurring therein was substituted by Act XLVII of 1950

Sub-section (5) was inserted by Act XIII of 1941

2 **Object and scope**—The object of the section is to impose duty on every provident society with regard to its assets and how its funds and investments are to be kept The section lays down that all its funds and investments except the deposits mentioned in section 73, are to be kept in the name of the society, or in the name of a public officer approved by the Central Government It also prohibits loans, out of its assets, to any of its directors, partners or officers or to any concern where any of its directors, partners or officers holds office therein except the loan on the security of a policy held by him in the society, within its surrender value Penalties are provided in sub-section (4) for contravening the provisions relating to granting of loans The provisions of this section are similar to those made in sections 29, 30 and 31 which concern the insurers

3 **Funds or investments how to be kept sub-section (2)**—Sub-section (2) lays down that every fund or investment of a provident society must be kept in the name of the society or in the name of a public officer

approved by the Central Government, i.e., such fund or investment must not be kept in the name of any individual whether any director, proprietor or partner of the society. But a deposit made under section 73, or under the law of any State or country relating to insurance would not come within the meaning of fund or investment as envisaged in this sub-section. The provisions of this sub-section are similar to those provided in sub-section (1) of section 31.

4. **Prohibition of loan: sub-section (3).**—Sub-section (3) prohibits loans, out of the assets of the society, to any director, manager, managing agent, auditor, actuary, officer or partner of the society. Even loans to any concern where any of those persons holds the same office or the other have been prohibited. But loans to them on the security of a policy of insurance held by them individually in the society are permitted provided the amount of loan is within the surrender value of the policy. First proviso to this sub-section permits loans to a banking company as by that proviso the provisions of this section have been made inapplicable for loans made by a provident society to a banking company. Second proviso to this sub-section lays down that by reason of any event occurring, circumstances arise whereby the existence of any subsisting loan which was not otherwise in contravention of this sub section but has become so, such loan, if it remains outstanding even in spite of any contract to the contrary, must be repaid within three months from the occurrence of the said event or from the commencement of the Insurance (Amendment) Act, 1946 (XVI of 1946), whichever is later. Where such loan is not repaid within the said period its consequence is that default in the society on the expiry of the said period of three months. But he may also be subject to other penalties provided in this Act, i.e., penalty provided by sub section (2) of section 102 or provisions of sub-section (4) of this section may also be attracted. The provisions of this sub-section are similar to those contained in sub section (1) of section 29 and the provisions in the second proviso thereto are similar to those contained in sub-sections (5) and (9) of section 29.[2]

5. **Non repayment of loan, effect of: sub section (3A).**—Sub-section (3A) speaks of loans made before the commencement of the Insurance (Amendment) Act, 1940 (XX of 1940). Where such loans are made and if they remain outstanding at the commencement of the said Amendment Act, the sub-section enjoins that the said loan must be repaid before the 1st day of January 1941. The consequences of non-repayment of the said loans have also been provided herein. Thus where a default is made, the director, manager, auditor, actuary or partner who has received the loan shall cease to hold office in the society and at the same time he shall be ineligible to hold office in or be a partner of the society until the loan is repaid. Moreover, if such loan is received by any concern of which the director, manager, auditor, actuary or partner also holds any office in the society, he shall cease to hold office in the society when the said loan remains unpaid after the said date and shall be ineligible to hold such office until the loan is repaid.

6. **Liability of director or other officers contravening the provisions regarding loans: sub-section (4).**—Sub-section (4) lays down a summary procedure for realisation of loans made to the director manager managing agent auditor actuary officer or partner of a society by the Controller through the process of a civil court. Thus where the society contravenes the provisions

1. *See* Notes under S 31 *supra*.

2. *See* also Notes under S 29, *supra*.

of sub section (3) and any director or partner or other officers aforesaid is knowingly a party to the said contravention, they shall be jointly and severally liable to the society for the amount of the loan. The said amount of loan together with interest which may be fixed at a rate not exceeding 12 per cent per annum by the Controller from the date of the said loan shall be recoverable, on the application by the Controller to any civil court of competent jurisdiction by execution as if a decree for such amount had been passed by that court. But realisation of the loan by the Controller through this summary procedure of levying the execution in a competent court would not absolve the director or partner or other officer of the society aforementioned from any other penalty to which he may be subjected to. He may be subjected to penalty provided in sub-section (2) of section 102 and be also subjected to disabilities mentioned in sub-sections (3) and (3A), namely, to hold his office in the society or to be eligible to hold the office in or be a partner of the society. [Compare section 30 with the provisions of this sub-section where such a power has not been conferred on the Controller, except that the director or other officers were made jointly and severally liable to make good the loss.]

Loan to director when permissible sub-section (5) — The provisions of sub-section (5) are based on the same principle of, and are exactly similar to, those made in sub-section (2) of section 29. This sub-section saves the director from contravening the provisions of the Companies Act, 1956, when a loan is granted to him by the society being a company if such loan is one granted on the security of a policy which the society bears the risk and the policy was issued to the director on his own life and the loan so advanced is within the surrender value of the policy.[2] Section 86D of the Indian Companies Act, 1913, mentioned in this sub-section should now be read as section 295 of the Companies Act, 1956.

Application of the funds under the English Act — The funds of societies, under the Industrial Assurance and Friendly Societies Act, 1948, must be applied in accordance with the rules. Thus where one rule permitted the creation of a fund and another provided that any surplus assets might be distributed by way of bonus, a resolution to transfer a certain sum out of the actuarial surplus to a fund is not *ultra vires*.[2] But where any person fraudulently obtains possession of or withholds or misapplies the property of the society he is liable on summary conviction to be fined or to be ordered to deliver up the misapplied property. Such complaint must be made within six months of the alleged wrongful dealing with the funds.[3]

86 The books of every provident society shall at all reasonable times be open to inspection by the Controller or any person appointed by him in this behalf or by any member or policy-holder of the society who has, on application in this behalf, been permitted by the Controller, subject to such conditions, if any, as he may impose, to make such inspection.

Inspection of books

Notes

The words "has, on application in this behalf, been permitted by the Controller subject to such conditions, if any, as he may impose, to make such inspection" were substituted by Act VI of 1946.

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1. *See* Note 5 under S 29 *supra*.
2. *Kirsoff v Hughton* (1912) 28 T L R 493.
3. S 87 and S 74 of the said Act.

This section imposes a duty on every provident society to permit inspection of its books to the persons mentioned therein at all reasonable times, and such inspection must be given at the usual office hours of the society on all working days except holidays Inspection of books should not be given to any and every person but must be given to (i) the Controller, or (ii) any person whom the Controller appoints for the purpose, or (iii) member, or (iv) policy holder The Controller appoints for the latter, the member or the policy holder should make an application to the Controller and obtain his permission before he can claim to inspect the books of the society Such a person will only be allowed to inspect the books with the permission of the Controller and subject to the conditions which the Controller may impose upon him

Section 40 of the English Industrial Assurance and Friendly Societies Act, 1948, also allows every member or person interested in the society's funds to inspect the books of the society at all reasonable hours at the registered office. This right may even extend to agents if no reasonable objection can be taken for such inspection but the knowledge so acquired by the agent through the inspection of books must be used for his principal[1]

Inquiry by or on behalf of Controller

87 (1) The Controller shall at least once in two years and may, if he thinks fit at any time, visit personally or depute a suitable person to visit the principal office of a provident society or the principal office in India of a society having its principal place of business or domicile outside India and inquire into the affairs of the society or may, after giving notice to the society and giving it an opportunity to be heard, direct such an inquiry to be made by an auditor or actuary appointed by him or by both an auditor and an actuary appointed simultaneously, or first by an auditor or an actuary only and afterwards by an actuary or auditor

(2) For the purposes of any such inquiry the Controller or the auditor or actuary, as the case may be, shall be entitled to examine all books and documents of the society and may demand from the society or any officer of the society such explanation as he may require on any matter relating to the affairs of the society

(3) The results of any such inquiry shall be recorded in writing by the person making the inquiry, and four copies of the record shall be supplied to the Controller and when the inquiry is completed, a copy of the record or of each such record where more than one are made in the course of the same inquiry, shall be sent by the Controller to the society concerned and shall be open to inspection by any member or policy-holder of the society

(4) All expenses of and incidental to any inquiry made by an auditor or actuary under sub-section (1) including any expenses incurred before the date on which the Controller receives notice of an appeal under clause (e) of sub-section (1) of section 110 shall

[1] *Fraser v. Hill* (1901) 2 Ch. 820; *Berg v. Kemp* (1904) 1 Ch. 561; *Dell v. Amalgamated Marine Workers' Union* 1 Ch. 116.

be defrayed by the provident society, shall have priority over other debts due from the society, and shall be recoverable as an arrear of land revenue

(5) The Controller may by notice in writing require the provident society to comply within a time to be specified therein not being less than fifteen days from the receipt of the notice by the society with any directions he may issue to remedy defects disclosed by an inquiry under this section

(6) If the society fails to comply with any directions issued under sub-section (5), the Controller may, after giving notice to the society and giving it an opportunity to be heard, apply to the Court for the winding up of the society

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Power to inquire and nature of inquiry, sub-sections* (1) *and* (2)
5 *Results of inquiry to be communicated to the society, sub-section* (3)
6 *Expenses of inquiry, sub-section* (4)
7 *Controller's powers and duties, sub-sections* (5) *and* (6)
8 *Examination of society's affairs under the English law*

1 Legislative changes —The words "or the principal office outside India" and the words "or by both an auditor actuary or auditor" occurring in sub-section (1) were inserted by Act XIII of 1941, the words "affairs of the society" in the same sub-section were substituted by Act VI of 1946, and the word "India" therein was substituted by Act LXII of 1956

Sub-section (3) was substituted by Act XIII of 1941, sub-section (4) was added by section 48 of Act XIII of 1941, and sub-sections (5) and (6) were inserted by Act VI of 1946

2 Object and scope —The object of the section is to ascertain the *solvency or otherwise and also the business methods of provident societies* registered under this Act whether such societies are Indian or of foreign origin through administrative machinery

To achieve the object this section empowers the Controller to inspect the affairs of the society Such inspection may be made in two ways, namely, either personally by the Controller who should visit the principal office of the society and examine all the books and documents and demand explanations necessary for the purpose or he may direct such inquiry to be made by an auditor or actuary or by both The enquiry report is then sent to the society to enable it to take necessary actions as the report will disclose The expenses of such inquiry are to be borne by the society and they are recoverable as an arrear of land revenue under the Public Demands Recovery Act Where the society fails to comply with the directions made by the Controller within the time laid down in this section the Controller has been further empowered to take the extreme step to apply to the Court for the winding-up of the society

3 Applicability —The provisions of this section have been made applicable to Indian and foreign provident societies who have their principal places of business or domiciles outside India

4 **Power to inquire and nature of inquiry, sub-sections (1) and (2)**—The inquiry envisaged under this section must be held at least once in two years and for the purpose the Controller has been given the discretion as follows

(i) he can make the inquiry himself, or

(ii) he can depute a suitable person to do the same, or

(iii) he can direct such an inquiry to be made by (a) an auditor or (b) an actuary, or (c) both an auditor and an actuary appointed by him

Where the inquiry is made by the Controller himself or by his deputy the inquiry has to be made by visiting the principal office of the society and in case of a foreign society, the principal office in India Where the inquiry is directed to be made by an auditor or an actuary or by both the Controller, before such an inquiry is directed, should give notice to the society and give it an opportunity to be heard in the matter Where the inquiry is directed to be made by both an auditor and an actuary, the Controller can appoint them simultaneously

The inquiry should be made into the affairs of the society and for the purposes of any such inquiry every person authorised to inquire as aforesaid shall be entitled to examine all books and documents of the society and may demand from it or any of its officers such explanations as he may require on any matter relating to the affairs of the society

5 **Results of inquiry to be communicated to the society, sub-section (3)**—Sub-section (3) lays down that the results of any such inquiry must be recorded in writing by the person making the inquiry and even when the Controller himself makes the inquiry, he should also record the results in writing Four copies of this record have to be supplied to the Controller and hence when the Controller himself makes the inquiry, he should also prepare four copies of the record although the supply of those copies does not arise in the case On completion of the inquiry the Controller has to send to the society concerned one copy of the said record or of each such record where more than one are made in the course of the same inquiry The copy of such record has to be kept open to inspection by any member or policy-holder of the society

Under the I A and F S Act, 1948, every registered society has to keep a copy of any special report hung up in a conspicuous place at the registered office of the society or branch It has also to keep similarly a copy of the last annual report and of the last quinquennial valuation [1]

6 **Expenses of inquiry, sub section (4)**—When the inquiry is made by the Controller himself or by his deputy, this sub-section does not provide for any expenses and hence the society cannot be saddled with any expenses But where an inquiry is directed to be made by an auditor or actuary or by both and the inquiry is made, this sub-section enjoins that all expenses of and incidental to such an inquiry have to be borne by the society concerned Such expenses will include those incurred before the date on which the Controller receives notice of an appeal under clause (a) of sub-section (1) of section 110 wherein an appeal from an order under this section has been provided and such appeal shall lie to the Court having jurisdiction This sub-section also provides that all expenses of such

[1] Section 29 of the said Act

inquiry as aforesaid shall have priority over other debts due from the society and shall be recoverable as an arrear of land revenue under the Public Demands Recovery Act, i e , such expenses can be realised by the Collector of the District by executing a certificate under the said Act

7 **Controller's powers and duties , sub-sections (5) and (6)** —The Controller's duty as regards the inquiry made under this section is that he can issue directions and require the provident society concerned to comply with those directions For doing this the Controller has to give the society notice in writing and in that notice he has to specify the time within which the society concerned shall have to comply with his directions in remedying defects which might have been disclosed in the said inquiry Such time must not be less than fifteen days from the date of the receipt of the notice by the society That is to say, the society must be prepared to comply with the directions of the Controller made in respect of the inquiry within fifteen days from the date of receipt of his notice as aforesaid

The consequences of the society's failure to comply with the said directions of the Controller within the time specified in the notice or within fifteen days from the date of the said notice are that it is liable to be proceeded against in Court for winding up In this respect the Controller has been given the discretion to apply to the Court for the winding up of the society which has failed to comply with his directions within the time specified, but before he takes this extreme step he should also serve notice upon the society and give it an opportunity to be heard against the actions proposed to be taken against it

8 **Examination of society's affairs under the English law** —Under the provisions of the I A and F S Act, 1948, a society s affairs may be examined by an inspector or inspectors appointed by the Chief Registrar with the consent of the Treasury But such appointment of an inspector or inspectors can be made when one-fifth of the whole members of the society, or a body of 100 members where its membership is less than 10 000 or a body of 500 members where its membership is more than 10 000 makes an application to the Chief Registrar for such examination [1]

87A (1) The insurance business of a provident society may be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society in accordance with a scheme prepared under this section and sanctioned by the Controller

Amalgamation and transfer of insurance business

(2) Any scheme prepared under this section shall set out the agreement under which the transfer or amalgamation is proposed to be effected, and shall contain such further provisions as may be necessary for giving effect to the scheme

(3) Before an application is made to the Controller to sanction any such scheme, notice of the intention to make the application together with a statement of the nature of the amalgamation or transfer, as the case may be, and of the reason therefor, shall, at least two months before the application is made, be sent

1 Section 76 of the said Act

to the Controller and certified copies, four in number, of each of the following documents shall be furnished to him, and other such copies shall, during the two months aforesaid, be kept open for the inspection of the members and policy-holders at the principal and branch offices of the provident societies concerned, namely,—

(a) a draft of the agreement or deed under which it is proposed to effect the amalgamation or transfer,

(b) balance-sheets in respect of the insurance business of each of the provident societies concerned in such amalgamation or transfer,

(c) actuarial reports and abstracts in respect of the insurance business of each of the provident society so concerned,

(d) a report on the proposed amalgamation or transfer prepared by an independent actuary,

(e) any other reports on which the scheme of amalgamation or transfer was founded, and the balance-sheets, reports and abstracts referred to in clauses (b), (c) and (d) shall all be prepared as at the date at which the amalgamation or transfer, if sanctioned by the Controller, is to take effect, which date shall not be more than twelve months before the date on which the application to the Controller is made under this section

Provided that the Controller may exempt the provident society or societies concerned from furnishing to him and from keeping open for inspection any one or more of the above documents

(4) When any application such as is referred to in sub-section (3) is made to the Controller, he may require, if for special reasons he so directs, notice of the application to be sent to every person resident in India who is the holder of a policy of any provident society concerned and may cause a statement of the nature and terms of the amalgamation or transfer, as the case may be, to be published in such manner and for such period as he may direct, and after hearing the societies concerned such policy-holders as apply to be heard and such other persons as he may deem fit, may sanction the arrangement, if he is satisfied that no sufficient objection to the arrangement has been established and shall make such consequential orders as are necessary to give effect to the arrangement, including orders as to the disposal of any deposit made under section 73

Provided that—

(a) no part of the deposit made by any party to the amalgamation or transfer shall be returned except where, after effect is given to the arrangement, the whole of the deposit to be made by the provident society carrying on the amalgamated business or the person to whom the business is transferred is completed ,

(b) only so much shall be returned as is no longer required to complete the deposit last mentioned in clause (a),

(c) while the deposit last mentioned in clause (a) remains uncompleted, no accession, resulting from the arrangement, to the amount already deposited by the provident society carrying on the amalgamated business or the person to whom the business is transferred shall be appropriated as payment or part-payment of any instalment of deposit subsequently due from it or him under section 73

(5) A copy of the order under sub-section (4) sanctioning or refusing to sanction the arrangement shall be sent to each of the societies concerned and to each of the policy-holders who applied to be heard

(6) If the scheme involves a reduction of the amount of the insurance and other contracts of the transferor society or of any or all of the societies concerned in the amalgamation, the Controller may sanction the scheme, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of the contracts as sanctioned by the Controller shall be valid and binding on all the parties concerned.

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Amalgamation and transfer of insurance business, permissibility of sub-sections (1) and (2)*
4 *Procedure for amalgamation and transfer, society's duty , sub-section (3)*
5. *Controller's duties and powers sections (4) and (5).*
6. *Reduction of insurance amount section (6)*
7. *Practice under English*

1 **Legislative changes.**—This section was inserted by the 1946 The word "Controller" occurring in the section was XLVIII of 1950 and the word "India" occurring in substituted by A O of 1950.

2 Object and scope—The object of this section is to facilitate amalgamation or transfer of insurance business of provident societies registered under the Act The provisions of this section are based on the provisions of sections 35 and 36 of the Act providing such transfers and amalgamation of insurance business in case of insurers

This section lays down how the insurance business of a provident society can be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society It provides that for such transfer or amalgamation, an application to that effect has to be made to the Controller for his sanction It also lays down the procedure to be followed by an intending society It further prescribes the duties of the Controller dealing with an application of transfer or amalgamation seeking his sanction thereto. The section also empowers the Controller in making such consequential order as he may deem necessary in the matter including the disposal of any deposit made under section 73 The Controller has also been empowered to reduce the amount of insurance contracts He has been given the power to hear the societies concerned, the policy holder or such other person as he may deem proper before sanctioning the transfer or amalgamation [1]

3 Amalgamation or transfer of insurance business, permissibility of, sub-sections (1) and (2)—The transfer of the insurance business of a provident society is permitted to any person but its amalgamation or transfer to any other provident society with the business of the latter has to be made in accordance with a scheme prepared under this section and such scheme must have the sanction of the Controller Thus, for an amalgamation or transfer there must be a scheme and that scheme must be sanctioned by the Controller Without such sanction no transfer or amalgamation can be effected

The scheme for the transfer or amalgamation should be prepared in a manner that it (*i*) must set out the agreement under which the transfer or amalgamation is proposed to be effected and (*ii*) must contain such further provisions as may be necessary for giving effect to the scheme [2]

4 Procedure for amalgamation and transfer, society's duty; sub-section (3)—Before an application is made to the Controller for sanction of any scheme of transfer or amalgamation the society must perform the following duties as laid down in sub-section (3), namely,—

(*i*) it must give notice, at least two months before the said application is made to the Controller expressing its intention to make the application Such notice must be accompanied by—

(*a*) a statement of the nature of the amalgamation or transfer, as the case may be,

(*b*) the reasons therefor,

(*c*) four certified copies of the documents such as, draft deed of agreement, balance-sheets of the two societies, their actuarial reports, report on the proposed amalgamation or transfer of an independent actuary or any other reports on which the scheme of amalgamation or transfer was based,

(*ii*) it must keep open during the said two months for the inspection of the members and policy-holders, at the principal and branch offices of the provident societies concerned, the copies of documents mentioned in item (*i-c*) above

1 *See* Note 2 under S 35 *supra* and Note 2 under S 36 *infra* 2. *See* Notes 4 and 6 under S 35, *supra*

But proviso to sub-section (3) confers discretion on the Controller to exempt the provident societies concerned or any of them from furnishing to him and from keeping open for inspection any one or more of the above documents mentioned in item (i-c)

The balance-sheets, actuarial reports and abstracts and the report of an independent actuary on the proposed amalgamation or transfer must be prepared as at the date at which the amalgamation or transfer if sanctioned by the Controller is to take effect and this date must not be more than 12 months before the date on which the application to the Controller is made under this section [1]

5 **Controller's duties and powers, sub-sections (4) and (5)** —In dealing with an application for sanction under this section, the Controller has to perform certain duties Before according his sanction to the scheme or arrangement for transfer or amalgamation, it lies within his discretion to do all or any of the following

(i) he may direct notice of the application to be sent to every person resident in India who is the holder of a policy of any of the provident societies concerned in the transfer or amalgamation ,

(ii) he may cause a statement of the nature and terms of the amalgamation or transfer to be published in the manner and for the period as he may direct , and/or

(iii) he may hear (*a*) the societies concerned, (*b*) those policy-holders who had applied to him for such hearing , and (*c*) such other persons as he may deem fit

It is only when the Controller is satisfied that no sufficient objection has been established to the arrangement or the scheme that he can accord his sanction to the transfer or the amalgamation, as the case may be When he sanctions the scheme it would be his duty to make at the same time such consequential orders as are necessary to give effect to the arrangement including orders relating to the disposal of any deposit made under section 73 In passing his orders about the disposal of the said deposit, the Controller's duty would be to see that—

(*a*) no part of the deposit made by the transferor society should be returned unless the whole of the deposit required to be made by the transferee or the transferee society has been made ,

(*b*) only so much of the said deposit has to be returned as is no longer required to complete the whole deposit ,

(*c*) where the whole of the amount required to be deposited remains uncompleted, the amount already deposited by the transferee society shall not be appropriated towards payment or part-payment of any instalment of deposit subsequently due from it under section 73 In this regard the accession resulting from the arrangement should not be taken into account with regard to the whole of the deposit required to be made under section 73

Where the Controller sanctions or refuses to sanction the scheme, the Controller's further duty is to send a copy of his order to each of the societies concerned and to each of the policy holders who applied to him for a hearing [2]

1 *See* also Note 7 under S 35 *supra* 2. *See* Notes 4 to 7 under S. 36 *supra*

2 **Object and scope**—The object of this section is to facilitate amalgamation or transfer of insurance business of provident societies registered under the Act The provisions of this section are based on the provisions of sections 35 and 36 of the Act providing such transfer and amalgamation of insurance business in case of insurers

This section lays down how the insurance business of a provident society can be transferred to any person or transferred to or amalgamated with the insurance business of any other provident society It provides that for such transfer or amalgamation, an application to that effect has to be made to the Controller for his sanction It also lays down the procedure to be followed by an intending society It further prescribes the duties of the Controller dealing with an application of transfer or amalgamation seeking his sanction thereto The section also empowers the Controller in making such consequential order as he may deem necessary in the matter including the disposal of any deposit made under section 73 The Controller has also been empowered to reduce the amount of insurance contracts He has been given the power to hear the societies concerned, the policy holder or such other person as he may deem proper before sanctioning the transfer or amalgamation [1]

3 **Amalgamation or transfer of insurance business, permissibility of, sub-sections (1) and (2)**—The transfer of the insurance business of a provident society is permitted to any person but its amalgamation or transfer to any other provident society with the business of the latter has to be made in accordance with a scheme prepared under this section and such scheme must have the sanction of the Controller Thus for an amalgamation or transfer there must be a scheme and that scheme must be sanctioned by the Controller Without such sanction no transfer or amalgamation can be effected

The scheme for the transfer or amalgamation should be prepared in a manner that it (*i*) must set out the agreement under which the transfer or amalgamation is proposed to be effected and (*ii*) must contain such further provisions as may be necessary for giving effect to the scheme [2]

4 **Procedure for amalgamation and transfer, society's duty, sub-section (3)**—Before an application is made to the Controller for sanction of any scheme of transfer or amalgamation the society must perform the following duties as laid down in sub-section (3), namely,—

(*i*) it must give notice, at least two months before the said application is made, to the Controller expressing its intention to make the application Such notice must be accompanied by—

(*a*) a statement of the nature of the amalgamation or transfer, as the case may be,

(*b*) the reasons therefor,

(*c*) four certified copies of the documents such as, draft deed of agreement, balance-sheets of the two societies, their actuarial reports, report on the proposed amalgamation or transfer of an independent actuary or any other reports on which the scheme of amalgamation or transfer was based,

(*ii*) it must keep open, during the said two months, for the inspection of the members and policy-holders, at the principal and branch offices of the provident societies concerned, the copies of documents mentioned in item (*i-c*) above

1 *See* Note 2 under S 35 *supra* and Note 2 under S 36, *supra*

2 *See* Notes 4 and 6 under S 35 *supra*

But proviso to sub-section (3) confers discretion on the Controller to exempt the provident societies concerned or any of them from furnishing to him and from keeping open for inspection any one or more of the above documents mentioned in item (i -c)

The balance-sheets, actuarial reports and abstracts and the report of an independent actuary on the proposed amalgamation or transfer must be prepared as at the date at which the amalgamation or transfer if sanctioned by the Controller is to take effect and this date must not be more than 12 months before the date on which the application to the Controller is made under this section [1]

5 **Controller's duties and powers, sub-sections (4) and (5)** —In dealing with an application for sanction under this section, the Controller has to perform certain duties Before according his sanction to the scheme or arrangement for transfer or amalgamation, it lies within his discretion to do all or any of the following

(i) he may direct notice of the application to be sent to every person resident in India who is the holder of a policy of any of the provident societies concerned in the transfer or amalgamation ,

(ii) he may cause a statement of the nature and terms of the amalgamation or transfer to be published in the manner and for the period as he may direct , and/or

(iii) he may hear (*a*) the societies concerned, (*b*) those policy-holders who had applied to him for such hearing , and (*c*) such other persons as he may deem fit.

It is only when the Controller is satisfied that no sufficient objection has been established to the arrangement or the scheme that he can accord his sanction to the transfer or the amalgamation, as the case may be When he sanctions the scheme it would be his duty to make at the same time such consequential orders as are necessary to give effect to the arrangement including orders relating to the disposal of any deposit made under section 73 In passing his orders about the disposal of the said deposit, the Controller's duty would be to see that—

(*a*) no part of the deposit made by the transferor society should be returned unless the whole of the deposit required to be made by the transferee or the transferee society has been made ,

(*b*) only so much of the said deposit has to be returned as is no longer required to complete the whole deposit ,

(*c*) where the whole of the amount required to be deposited remains uncompleted, the amount already deposited by the transferee society shall not be appropriated towards payment or part-payment of any instalment of deposit subsequently due from it under section 73 In this regard the accession resulting from the arrangement should not be taken into account with regard to the whole of the deposit required to be made under section 73

Where the Controller sanctions or refuses to sanction the scheme, the Controller s further duty is to send a copy of his order to each of the societies concerned and to each of the policy holders who applied to him for a hearing [2]

1 *See* also Note 7 under S 35 *supra* 2. *See* Notes 4 to 7 under S. 36, *supra*

6 **Reduction of insurance amount, sub-section (6)**—Sub-section (6) empowers the Controller, when it appears to him that the scheme involves a reduction of the amount of insurance and other contracts of one or other or both the societies concerned, to reduce the amount of such contracts upon such terms and subject to such conditions as he may think proper and to sanction the scheme with the said contracts so reduced Such reduction of contracts made by the Controller binds all the parties concerned [1]

7 **Procedure under the English law**—A registered society under the Friendly Societies Act, 1896, can amalgamate with one or more other such societies or transfer its engagements to another registered society by a special resolution which has been assented to by five sixths in value of the members and where every member entitled to any benefit from the funds has either given his written consent or been satisfied or adequately secured in respect of his claim But the Chief Registrar has the discretion with the consent of the Treasury, to order dispensing with such assents or consents in any particular case An aggrieved member has a right of appeal to the county court [2]

Winding up by Court and voluntary winding up

88 (1) The Court may order the winding up of a provident society being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, and the provisions of the Indian Companies Act, 1913, shall, subject to the provisions of this Part, apply accordingly

(2) In addition to the grounds on which such an order may be based, the Court may order the winding up of a provident society if the Controller who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely,—

(*a*) that the registration of the society has been cancelled under sub-section (4) of section 70,

(*b*) that it appears from the returns furnished under the provisions of this Act or as the result of an inquiry made under section 87 that the society is insolvent,

(*c*) that the continuance of the society is prejudicial to the interests of the policy-holders

(3) A provident society being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, may be wound up voluntarily in accordance with the provisions of the Indian Companies Act, 1913, but shall not be so wound up except for the purpose of effecting an amalgamation or reconstruction of the society or on the ground that by reason of its liabilities it cannot continue its business

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1 *See* Note 8 under S 36 *supra* 2. See Sections 70 71, 74 of the said Act

(4) A provident society not being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act, 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby, may be wound up voluntarily under this Act, if a resolution is passed by the proprietors that the society should be wound up voluntarily for the purpose or on the ground specified in sub-section (3) and the Controller may, in any case where he has ordered the cancellation of the registration of a society under sub-section (4) of section 70, order the winding up of the society under this Act

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Societies registered under the Companies Act, procedure for winding up*
5 *Provident society not being a company, winding up of*
6 *Winding up under English law*

1 Legislative changes —The words and figures "or under the Indian Companies Act, 1882 any Act repealed thereby" occurring in sub-sections (1), (3) and (4) of the section were inserted by Act VI of 1946 The words and figures "the Indian Companies Act, 1913" occurring in sub-sections (1) and (3) were substituted for the words "that Act" by Act XII of 1941

Sub-section (2) was inserted by Act VI of 1946

2 Object and scope —The object of the section is to provide machinery for winding up of provident societies registered under this Act The societies whether registered under the Companies Act or not can be wound up under this section. But different modes of winding up have been provided in the several sub-sections of this section Firstly, winding up of societies registered under the Companies Act can be wound up by the Court on the same grounds as provided in the Companies Act but subject to the provisions of Part III of this Act Secondly, winding up of those societies can also be made by the Court when applied to it by the Controller on grounds mentioned in clauses (*a*) to (*e*) of sub-section (2) Thirdly, a society registered under the Companies Act can also be wound up voluntarily according to the provisions of the said Act but only on the grounds mentioned in sub-section (3) Lastly, a provident society not registered under the Companies Act can be wound up voluntarily under this Act if a resolution is passed by the proprietors to that effect The Controller has also been given the discretion to order the winding up of the society where cancellation of its registration has been ordered by him [1]

3 Applicability —The provisions of this section are applicable to all provident societies registered under this Act irrespective of whether they are registered under the Companies Act or not. Societies registered under the Companies Act and societies not so registered under that Act come within the fold of this section

1 *See* In the matter of Sacred Thread Provident Funds Society 1936 Sind 165, where it has been said that where none of the members of the society applying for the winding up of the society are policy holders within the meaning of S 2 (7) of the Life Assurance Companies Act 1912 the High Court has no jurisdiction to wind up the society under S 22 of that Act

4 Societies registered under the Companies Act, procedure for winding up —Societies registered under the Indian Companies Act, 1913, or the Indian Companies Act 1882, or the Indian Companies Act, 1866 or under any Act repealed thereby,[1] can be wound up by the Court or voluntarily in accordance with the provisions of the Indian Companies Act 1913.[2] But in the application of the provisions of the Companies Act, 1956, to the winding up of a provident society registered under this Act, the provisions of the former Act should be applied subject to the provisions contained in Part III of this Act. This section occurring in Part III of the Act, contains certain special provisions for winding up of a provident society being a company incorporated under the Companies Act. Thus, in the case of winding up by the Court, the grounds available for such winding up as provided in section 433 of the Companies Act, 1956,[3] the Court may wind up the society on additional grounds, when the petition for winding up is presented by the Controller, such as follows

(*a*) that the registration of the society has been cancelled under sub-section (3) of section 70,

(*b*) that the society is insolvent as would appear from the returns furnished or from the result of inquiry under section 87,

(*c*) that the continuance of the society is prejudicial to the interests of the policy holders.[4]

As regards voluntary winding up, a provident society being a company registered under the Companies Act, 1956, may be wound up voluntarily according to the provisions of that Act, that is to say, the provisions contained in Chapter III of the same Act, namely sections 484 to 520, are attracted in the winding up of such societies voluntarily, but those provisions are subject to the provisions contained in Part III of this Act. Thus, a society being a company registered under the Companies Act, 1956, must not be wound up voluntarily except on the following grounds (i) for effecting an amalgamation or re-construction of the society, or (ii) by reason of its liabilities it cannot continue its business.[5]

5 Provident society not being a company, winding up of — A provident society not being a company registered under the Companies Act, 1956, may be wound up voluntarily under this Act when its proprietors pass a resolution that the society be wound up voluntarily on the grounds either for effecting an amalgamation or re-construction or because of its liabilities it cannot continue its business. The Controller has also the power to order the winding up of the society under this Act where he has ordered the cancellation of its registration under sub-section (4) of section 70.[6]

6 Winding up under English law —Section 399 of the Companies Act 1948 confers jurisdiction on the Court to wind up any society, whether registered or unregistered.[7] The jurisdiction to order winding up is in the High Court and not in the County Courts.[8] A society may also be wound up in an action in which all classes of members are represented.[9]

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1 Now the Companies Act 1956
2 Now replaced by the Companies Act 1956
3 S 162 of the Indian Companies Act 1913
4 For detailed discussion *see* Notes under S 53 *supra*
5 *See* Notes under S 51 *supra*
6 *See* Note 5 under S 70 *supra*
7 *Re Victoria Society Cuttingley* (1913) 1 Ch 167
8 *Re Iron Founders (Bradford Branch) Social Club* (1923) W N 127
9 *Re Lead Companies Workmen's Fund* (1904) 2 Ch 196 *Blake v Smither* (1906) 2 T L R 693

Reduction of insurance contracts

89 The Court may make an order reducing the amount of the insurance contracts of a provident society upon such terms and subject to such conditions as the Court thinks just—

(*a*) if the Conroller as an alternative to cancelling the registration of a society under sub-section (4) of section 70 applies to the Court in this behalf,

(*b*) if while a society is in liquidation the Court thinks fit,

(*c*) if when a society has been proved to be insolvent the Court thinks fit to do so in place of making an order for the winding up of the society, or

(*d*) if the Court is satisfied on an application made in this behalf by the society supported by the report of an actuary, and after giving the policy-holders an opportunity to be heard that it is desirable to do so

Notes

The principle of this section is based more or less on the lines provided in section 61 of the Act This section confers discretionary power on the Court to order reduction of the amount of insurance contracts of a provident society But in ordering such reduction the Court has power to impose any term and condition subject to which the reduction is to take effect The circumstances under which the Court can exercise its discretion in this behalf are—

(i) where an application by the Controller is made to it as an alternative to the cancellation of the registration of the society,

(ii) where the society is in liquidation and the Court is of opinion that the ends of justice would be met by reducing the amount of contracts,

(iii) where it finds the society to be insolvent but at the same time it is of opinion that it would be proper to reduce the amount of insurance contract instead of ordering its winding up, or

(iv) where the Court thinks desirable to reduce the amount of insurance contracts on being satisfied from an application made to it by the society supported by the report of an actuary, in such a case the Court should also give the policy-holders an opportunity of being heard in the matter [1]

Appointment of liquidator

90 (1) Where a provident society is to be wound up whether under the Indian Companies Act, 1913, or under this Act, the society shall, within seven days from the date of the order of the Court ordering the winding up or the passing of the resolution authorising the winding up, as the case may be, give notice thereof to the

[1] *See* also Notes 2 and 3 under S 61, *supra*

Controller and except where the winding up is done by an order of the Court, the Controller shall appoint the liquidator and shall determine the remuneration to be paid to him

Provided that if the Controller is not satisfied that the assets of the society are sufficient to meet the costs of liquidation including the remuneration of the liquidator, he may decline to make such appointment, and in such a case the society shall itself appoint a liquidator who shall carry out the liquidation as if the winding up was being done by an order of the Court

(2) Any liquidator appointed by the Controller under sub-section (1) may be removed by the Controller if satisfied that the duties entrusted to him are not being properly discharged

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Society's duties in voluntary winding up*
4 *Controller's powers in voluntr winding up*

1 **Legislative changes** —Proviso to sub-section (1) was added by Act XIII of 1941 and the words and figures "appointed by the Controller under sub section (1)" occurring in sub-section (2) were substituted for the words "so appointed" by the said Act

2 **Object and scope** —The object of the section is to empower the Controller, in case of voluntary winding up of a provident society, to appoint the liquidator and fix his remuneration unlike the provisions in the Companies Act 1956, where such liquidator is appointed by the company including fixing his remuneration in general meeting (section 490) The Controller has also been empowered to remove the liquidator appointed by him on his being satisfied that the liquidator has been performing his duties properly But it is not in every case of voluntary winding up that he should appoint the liquidator The Controller has the discretion to decline to make the appointment of any liquidator in case where he is satisfied that the assets of the society are not sufficient to meet the costs of liquidation including the remuneration of the liquidator In such a case the society has to appoint such liquidator

In case of winding up of the society by the Court, the Official Liquidator by virtue of his office shall become the liquidator of the society as is now provided in section 449 of the Companies Act, 1956

3 **Society s duties in voluntary winding up** —Where a provident society is to be wound up whether under the Companies Act, 1956, or under this Act, the duties of that society are—

(i) that it must give notice to the Controller about (*a*) the order of the Court ordering the winding up or (*b*) the passing of the resolution authorising the winding up in both the cases notice has to be given within seven days either of the order of the Court or the passing of the resolution aforesaid , and

(ii) it must appoint a liquidator where the Controller declines to appoint any , in such a case the liquidator has to carry out

the liquidation as if the winding up was being done by an order of the Court

4 **Controller's powers in voluntary winding up**—The Controller's powers in voluntary winding up of a provident society whether made under the Companies Act, 1956, or under this Act, are—

(i) that he has to appoint the liquidator and determine his remuneration to be paid to him on receipt of a notice from the society that the latter is being wound up voluntarily ; or

(ii) that he may refuse to appoint such liquidator where he is satisfied that the assets of the society are not sufficient to meet the costs of liquidation including the remuneration to be payable to the liquidator ,

(iii) that he may remove the liquidator when he is satisfied that the duties entrusted to the liquidator are not being properly discharged

Application of Act to liquidators

90A Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), the provisions of sections 91, 92 and 93 shall apply to any liquidator appointed to wind up a provident society, whether by the Court, the Controller or the society itself.

Notes

This section was inserted by Act VI of 1946

The object of the section is to give equal status to all liquidators appointed under this Act to wind up a provident society, that is, a liquidator appointed by the Court or a liquidator appointed by the Controller or a liquidator appointed by the society itself, shall have equal powers and duties as laid down in the succeeding sections 91, 92 and 93 of the Act in relation to the winding up of societies for which they are appointed; whether the winding up is made by the order of the Court or voluntarily

Powers of liquidator

91 (1) A liquidator appointed to wind up a society shall have power—

(a) to institute or defend any legal proceedings on behalf of the society by his name of office ,

(b) to determine the contribution to be made by members of the society respectively to the assets of the society ,

(c) to investigate all claims against the society and to decide questions of priority arising between claimants ,

(d) to determine by what persons and in what proportion the costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (g) of this sub-section are to be borne ;

(e) to give such directions in regard to the collection and distribution of the assets of the society as ma appear to him to be necessary for winding up the affairs of the society ,

(f) to summon, and enforce the attendance of, witnesses and to compel the production of documents by the same means and as far as may be in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908 ,

(g) with the sanction of the Controller to employ such establishment and to obtain such assistance from an actuary or an auditor as may be necessary for the discharge of his duties ,

(h) to sell the immovable and movable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels

(2) The liquidator shall, for settling the list of contributories and realising the amount of contributories have the same powers as an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Powers of a liquidator*
4 *Powers of a liquidator in winding up by the Court under the Companies Act*, 1956
5 *Powers of a liquidator in voluntary wounding up under the Companies Act*, 1956
6 *Liquidator's powers in settling the list of contributories*

1 Legislative changes —The words "including the remuneration of the liquidator and any expenses incurred under clasue (g) of this sub-section" occurring in clause (d) of sub-section (1) was inserted by Act XIII of 1941, the word "and' occurring after 1908 in clause (f) and clause (h) in sub-section (1) were respectively omitted and added by Act XLVII of 1950

2 Object and scope —The object of this section is to confer powers on a liquidator appointed for winding up a society under this Act The powers that a liquidator can exercise in the winding up of a societv have been defined in this section The powers conferred on a liquidator under this section are wider than the powers conferred on the liquidator under section 457 of the Companies Act, 1956, in the sense that the exercise by the liquidator in a winding up by the court of the powers conferred by that section shall be subject to the control of the court whereas the powers of a liquidator under the section is not subject to any such control except his power of settling the list of contributories and realising the amount of contributions which must be exercised subject to the control of the court

3 Powers of a liquidator —Various powers have been conferred on a liquidator appointed for the winding up of a society They have been mentioned in clauses (a) to (h) of this section These powers are to be read

in addition to the powers which a liquidator has been invested by section 457 of the Companies Act, 1956, in case of winding up by the court and by section 494 of that Act in case of voluntary winding up The powers that are conferred on a liquidator under this section are—

(i) power to institute or defend any legal proceedings on behalf of the society by his name of office[1],

(ii) power to determine the contribution to be made by members of the society respectively to the assets of the society,

(iii) power to determine by what persons and in what proportions the costs of liquidation are to be borne, such costs will include the remuneration of the liquidator, actuary or auditor if appointed and the costs of establishment,

(iv) power to give directions for the collection and distribution of the assets of the society necessary for winding up the affairs of the society,

(v) power to summon the witnesses and enforcing their attendance and to compel the production of documents, the means to be adopted in this regard are those provided in Order XVI of the Code of Civil Procedure, 1908,

(vi) power to employ such establishment and to obtain such assistance from an actuary or an auditor necessary for the discharge of his duties, this power the liquidator has to exercise with the sanction of the Controller,

(vii) power to sell any property by private contract or public auction with power to transfer or sell the whole or by parts to any person or society [2]

4 Powers of a liquidator in a winding up by the Court under the Companies Act, 1956 —Section 457 of the Companies Act, 1956, confers powers on the liquidator in a winding up by the court but he must exercise those powers with the sanction of the court Besides the powers to institute and defend legal proceedings and to sell property or transfer the whole or part, the liquidator under that section has the powers—

(i) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company,[3]

(ii) to raise on the security of the assets of the company any money requisite,

(iii) to appoint an agent to do any business which the liquidator is unable to do himself,

(iv) to take out, in his official name, letters of administration to any deceased contributory,

(v) to inspect the records and returns of the company on the files of the Registrar without payment of any fee,

(vi) to execute, in the name and on behalf of the company, all deeds receipts and other documents, and if necessary, to use the company's seal,

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1 This power is similar to what has been conferred on a liquidator under S 457 (1) (a) of the *Companies Act* 1956

2 This power is similar to that contained in S 457 (1) (c) of the Companies Act 1956

3 *See* also *re Batey*, Ex parte *Emmanuel* (1881) 17 Ch. D 35

(*vii*) to prove, rank and claim in the insolvency of any contributory and to receive dividends in the insolvency,

(*viii*) to draw, accept, make and indorse any bill-of-exchange, *hundi* or promissory note in the name and on behalf of the company,

(*ix*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets

Regarding the meaning of the expression "subject to the control of the court", see *Re Taj Clay Works*,[1] regarding sanction of the court, see *Dr Satlendra Nath* v *Jasoda*,[2] and the cases cited in Note 3 under section 55, *supra*, regarding costs of the liquidator, see *Re Pacific Coast Syndicate*[3], *Re Wenborn & Co*[4], *Re Davis & Co Ltd*,[5] *Shead Hazel & Co*, v *Cooper*,[6] regarding distribution of assets, see *Re Phoenix Oil and Transport Co, Ltd*[7]

5 **Powers of a liquidator in voluntary winding up under the Companies Act, 1956** —Where a company is wound up voluntarily merely for the purpose of reconstruction or amalgamation with another company, section 494 of the Companies Act, 1956, confers powers on the liquidator by sanction of a special resolution of the company—

(*i*) to receive, by way of compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company, for distribution among the members of the transferor company,

(*ii*) to enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company

The sale or transfer can be made only in favour of another company and not in favour of any other person or to a trustee of the company intended to be incorporated or about to be formed[8]

6 **Liquidator's power in settling the list of contributories** —Subsection (2) of this section lays down that a liquidator appointed under this Act shall have the same powers as an official liquidator under the Companies Act in settling the list of contributories and realising the amount of contributions[9]. The settlement of the list of contributories is based on the names of shareholders as found in the register of members Where the company makes default in not registering a transfer, the transferor may avoid liability, but where the default is made either by the transferor or transferee in not having the name entered, the transferor cannot escape liability[10] Since the official liquidator can realise contribution payable by the contributories only through the intervention of the court, it is not open to the liquidator appointed under section 490 of this Act to ignore that procedure and realise the contribution himself[11]

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1 1960 Andhra 429
2. 1959 S C 51
3 (1913) 2 Ch 26
4. (1905) 1 Ch 413
5. (1945) Ch 402.
6 (1933) 1 K B 840
7 (1958) 1 All E R 158.
8. Ex-parte *Fox* (1871) 6 Ch App 176
9 *See* S 467 of the Companies Act 1956
10 *In the matter of Darjeeling Bank* 63 C W N 464 1959 Cal 335
11 *J C Chandiok* v *Peary Lal* I LR (1942) All 26 1942 A L J 47 A I R. 1942 All 136

92 (1) As soon as a liquidator is appointed to wind up a society he shall take charge of all property, movable or immovable, of the society and of all its books and documents

Procedure at liquidation

(2) If any proprietor or officer of the society or any person retains any portion of the assets of the society or fails to deliver to the liquidator any book or document when he is required by the liquidator, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both, and the Court may order the delivery of the assets or book or document to the liquidator.

(3) The liquidator shall within fifteen days of his appointment send notice by post to all persons who appear to him to be creditors of the society that a meeting of the creditors of the society will be held on a date not being less than twenty-one nor more than twenty-eight days after his appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the local official Gazette and once at least in two newspapers circulating in the State in which the society is situated

(4) At the meeting so held the creditors shall determine whether an application shall be made for the appointment of any person as liquidator in the place of or jointly with the liquidator already appointed, or for the appointment of a committee of inspection, and if they so resolve and an application accordingly is made at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting, the Controller may, if he thinks fit, appoint a suitable person in place of or jointly with the liquidator already appointed, and determine the remuneration to be paid to him, and if he considers it desirable, may also appoint a committee of inspection

(5) The committee of inspection shall, subject to any prescribed conditions, have a general power of supervision over the acts of the liquidator and shall have the right to inspect his accounts at all reasonable times

(6) The liquidator shall, with such assistance from an actuary as may be required, ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society, and shall give notice of the amount so found to each such person in the prescribed manner and each such person on receiving such notice shall be bound by the value so ascertained

(7) The liquidator shall make a valuation of the assets of the society and an estimate of the cost of the winding up, and shall on the basis of these, settle the list of contributories

(8) The liquidator shall apply to the Controller for an order for the return of the deposit made by the society under section 73 and the Controller shall on such application order the return of the deposit subject to such terms and conditions as he may think fit

(9) In administering and distributing the assets of the society the liquidator shall have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Controller

(10) The liquidator shall keep books of account in which he shall record the proceedings at all meetings attended by him, all amounts received or expended by him and any other matter that may be prescribed, and these books may, with the sanction of the Controller, be inspected by any creditor or contributory

(11) If the winding up continues for more than a year the liquidator shall summon a meeting of the creditors and contributories at the end of the first year and of each succeeding year, and shall lay before them an account of his acts and dealings and of the conduct of the winding up, and that account together with any views expressed thereon by the meeting shall be forwarded by the liquidator within one week after the meeting to the Controller

(12) So far as is not otherwise provided herein or is not otherwise prescribed under this Act, the liquidator shall so far as practicable follow the procedure to be followed by an official liquidator appointed by the Court for the winding up of a company under the Indian Companies Act, 1913

(13) The costs of the liquidation including the remuneration of the liquidator and any expenses incurred under clause (*g*) of sub-section (1) of section 91 if the liquidator decides that they shall be payable out of the assets of the society, be payable in priority to all other claims

SYNOPSIS

Legislative changes
Object and scope
3 *Taking over charge by liquidator sub section* (1)
4 *Penalty for delinquent proprietor or officer of the society sub-section* (2)
5. *Summoning of creditors' meeting sub-section* (3)
6 *Committee of Inspection and its functions sub-sections* (4) *and* (5)
7 *Liquidator's duties*
(A) *Ascertainment of society's liabilities*
(B) *Valuation of society's assets*
(C) *Application for return of deposit*
(D) *Keeping of books of account*
(E) *Laying before the creditors' meeting an account of his acts, dealings and conduct of winding up*
(F) *Procedure to be followed*
8 *Costs of liquidator*

1. **Legislative changes**—The word "State" in sub section (3) was substituted by A O , 1950, the words "determine the remuneration committee of inspection" and the words "and if he considers com mittee of inspection" in sub-section (4) were substituted respectively by Act XLVII of 1950 and Act VI of 1946, and sub section (13) was also inserted by Act XLVII of 1950

2 **Object and scope**—The object of the section is to lay down the procedure to be followed in winding up of provident societies under this Act The procedure laid down in this section is a combination of different sections of the Companies Act, 1956, narrated in a summary way Thus, section 456 speaks of the custody of company's property, section 460 lays down about the summoning of creditors' meeting, sections 464 and 465 provide for the appointment of committee of inspection and its functions, section 461 prescribes the books to be kept by the liquidator, and section 470 speaks of costs and so on

Apart from providing for the procedure to be followed by the liquidator in the winding up, in the matters, such as, taking charge of society's properties, books and documents, summoning a creditors meeting etc , certain duties have also been imposed on the liquidator by this section Thus, he has to ascertain the amount of the society's liability, to make a valuation of its assets, to administer and distribute them, to keep books of account, to apply for an order for the return of the deposit and lay before the meeting of the creditors and contributories an account of his acts and dealings and of the conduct of the winding-up

This section also empowers the meeting of the creditors to change the liquidator appointed or to appoint another person jointly with him In this regard the Select Committee observed thus "In sub-clause (4) we have allowed the creditors the option of pressing for a change of the liquidator appointed by the Superintendent of Insurance" It also provides that the liquidator appointed under this Act shall as far as practicable follow the procedure to be followed by an official liquidator where there is no procedure provided in this section or is not otherwise prescribed This section also confers discretion on the liquidator to decide whether the costs of liquidation shall have priority over the other debts of the society

3 **Taking over charge by the liquidator sub-section (1)**—Sub-section (1) provides that a liquidator, as soon as he is appointed to wind up a provident society, has to take charge of all property of the society, both movable and immovable, and also of all its books and documents Section 456 of the Companies Act, 1956, provides that where a winding up order has been made the liquidator shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled [1]

4 **Penalty for delinquent proprietor or officer of the society sub-section (2)**—Sub-section (2) provides penalty for any proprietor or officer of the society or any other person retaining any portion of the assets of the society or failing to deliver to the liquidator any book or document when so required by the liquidator The penalty provided is six months' imprisonment or a fine extending to Rs 500 or he may be penalised with both This

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1 See *Ripon Press and Sugar Mills Co v Gopal Chetty* 55 Mad 180 where the Privy Council has observed that on the passing of an order of winding up the company's assets are to be treated as being in the custody of the Court

sub-section also confers discretion on the Court to order the delivery of the assets or book or document to the liquidator The provisions of this sub-section may conveniently be read with sub-section (1-A) of section 456 and section 468 of the Companies Act, 1956 [1]

5 **Summoning of creditors' meeting sub-section (3)** —Sub-section (3) imposes duty upon the liquidator to call a meeting of the creditors of the society For this purpose he shall, within 15 days of his appointment, send notice by post to all persons who appear to him to be creditors of the society setting forth therein that a meeting of the creditors of the society will be held on a date which must not be less than 21 nor more than 28 days after his appointment The notice must also state the place and hour of the meeting Such notice of the meeting has to be advertised once in the local official Gazette and once at least in two newspapers circulating in the State in which the society is situated This sub-section may conveniently be read along with section 495 of the Companies Act, 1956, wherein a statutory duty has been imposed on the liquidator to summon a meeting of the creditors when he has reason to believe that the company will not be able to pay its debts in full within the period stated in the declaration of solvency

6 **Committee of inspection and its functions sub-sections (4) and (5)** —Sub-section (4) confers discretionary powers on the Controller to appoint a suitable person in place of the liquidator already appointed or to appoint one jointly with the latter according as the meeting of the creditors determines in this regard The Controller may also appoint a committee of inspection if he thinks it desirable to do so, when a resolution to that effect is passed that effect in the creditors' meeting In order to ask the Controller to exercise his discretion in this regard an application has to be made to the Controller at any time not later than 14 days after the meeting of the creditors where the creditors after determining the question of change of the liquidator or of the appointment of another jointly with the liquidator already appointed or of the appointment of a committee of inspection resolved for such appointment The application to the Controller can be made by any creditor appointed for the purpose at the meeting

Section 464 of the Companies Act, 1956, confers discretion on the Court to direct appointment of a committee of inspection to act with the liquidator Within two months from the said order the liquidator has to convene a meeting of the creditors to determine who are to be members of the committee and thereafter within 14 days from the date of the creditors' meeting he has to convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee Except where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the Court for direction as to what the composition of the committee shall be and who shall be members thereof The Court has power to re-summon a meeting or summon a further meeting [2]

Sub-section (5) lays down the functions of the committee of inspection Its chief functions are to have a general power of supervision over the acts of the liquidator and to have the right to inspect his accounts at all reasonable times This sub-section may conveniently be read along with section 465

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1 See *In re Eastern Tavoy Mineral Corporation Ltd in liquidation Re Lloyd's Bank Ltd* 41 C W N 975 *Samji Kheta v A V Patwardhan*, 1959 Bom 474 *Gaya Sugar Mills Ltd v Nand Kishore Bajoria* 1959 S C 441

2. See *Re Rubber and Produce Investment Trust* (1915) 1 Ch 382 *Re Radford and Bright* (1901) 1 Ch 272

of the Companies Act, 1956, wherein it has been provided that such committee shall be constituted of not more than 12 members being creditors and contributories of the company and the quorum for its meeting shall be one-third of the total number of members, or two, whichever is higher Regarding the purchase of property of the company by a member of the committee, see *Durga Prasad* v *Official Liquidator, Benaras Bank Ltd*.[1]

7 **Liquidator's duties** —A liquidator appointed under this Act has been assigned certain duties by this section He has to ascertain the amount of the society's liability, to make a valuation of its assets, to administer and distribute them, to keep books of account, to lay before a meeting of the creditors and contributories at the end of each year an account of his acts and dealings, etc , and to forward same to the Controller and to decide whether the costs of liquidation are payable out of the assets of the society He has also to follow the procedure to be followed by an official liquidator where there is no procedure provided in this Act

(*A*) *Ascertainment of society's liabilities sub-section* (6) —Sub-section (6) enjoins on the liquidator to ascertain as soon as practicable the amount of the society's liability to every person appearing by the society's books to be entitled to or interested in any policy issued by the society He has the power to ascertain such liability of the society with the assistance of an actuary as may be required for the purpose In this regard he has to give notice of the amount so found to each such person in the prescribed manner and on receipt of a notice from the liquidator the person shall be bound by the value so ascertained

Such notices must be sent by post to the last known addresses of the persons concerned as recorded in the society's books and certificates of posting shall be obtained therefor, but the liquidator has the discretion to send all or any of the notices by registered post [2]

Section 474 of the Companies Act provides that the Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts or claims are proved [3]

(*B*) *Valuation of society's assets sub-section* (7) —Sub-section (7) enjoins on the liquidator to make a valuation of the assets of the society and an estimate of the costs of the winding up and on the basis of the valuation of assets and estimate of the costs he has to settle the list of contributories The provisions of this sub-section may be compared with the provisions contained in section 467 of the Companies Act, 1956, where in settling the list of contributories, the Court has to distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others [4]

The Court is competent to re-settle the list of contributories when it finds just to do so [5] In *re Free Press Journal (Madras) Ltd*, the principles guiding the Court in settling the list of contributories and the circumstances

1 1959 All 196 *Re Bulmer* (1937) 1 All E R 323

2 Rule 23 Insurance Rules 1939.

3 See *Raj Kumari* v *Mohan Picture Producers Combine* (1942) 1 M L J 466 : 1942 Mad 349 *Muller* v *Ferguson* 60 Cal 512 *Re Art Reproduction Co Ltd* (1951) 2 All E R. 984, *Re Reproduction Co Ltd* (1951) 2 All E R 984

4 Regarding the procedure for settling list of contributories *see* Rules 180—196 and for collection and distribution of assets, Rule 232 to 234 of the Companies (Court) Rules 1959

5 *In re Onward Building Society*, (1891) 2 Q B 463

where such a list can be dispensed with have been discussed [1] Subject to appeal the list settled by the Court is final and conclusive [2]

(*C*) *Application for return of deposit sub section* (8) —Sub-section (8) lays down that for the return of deposit made by the society under section 73 the liquidator has to make an application to the Controller in that regard It also empowers the Controller upon such application from the liquidator to order the return of the deposit But in ordering such return of the said deposit, the Controller has been given the discretion to impose terms and conditions as he may deem fit in the matter [3]

(*D*) *Keeping of books of account sub-section* (10) —Sub-section (10) enjoins on the liquidator the duties of keeping books of account in which he shall record (*i*) the proceedings at all meetings attended by him, (*ii*) all amounts received or expended by him, and (*iii*) any other matter that may be prescribed This sub section further lays down that these books of account can be inspected by any creditor or contributory but for such inspection the sanction of the Controller will be necessary Section 461 of the Companies Act provides similarly that the liquidator has to keep proper books in the manner prescribed in which he has to record the minutes of proceedings at meetings and such other matters as may be prescribed Subject to the control of the Court such books can be inspected by any creditor or contributory or by his agent [4]

(*E*) *Laying before the creditors' meeting an account of his acts, dealings and conduct of winding up sub-section* (11) —Sub section (11) imposes a duty on the liquidator to convene a meeting of the creditors and contributories at the end of the first year and of each succeeding year where the winding up continues for more than a year In that meeting the liquidator has to lay before the members an account of his acts, dealings and the conduct of the winding up Lastly the liquidator has to forward to the Controller the said account together with any views expressed thereon by the meeting He has to forward this account within one week after the said meeting is held Section 496 of the Companies Act, 1956, also imposes duty on the liquidator to call a general meeting of the company at the end of each year in the event of the winding up continuing for more than one year [5]

(*F*) *Further procedure to be followed sub section* (12) —Sub section (12) enjoins on the liquidator to follow as far as practicable the procedure to be followed by an official liquidator appointed by the court while winding up a company under the Companies Act, 1956, when there is no provision either in this Act or in the rule prescribed by this Act But when the procedure is laid down in this Act or in the rule prescribed, the liquidator has no power to follow the procedure as is followed by the official liquidator under the Companies Act, 1956 He must be guided by the procedure laid down in this Act

8 **Costs of liquidation sub-section (13)** —Sub-section (13) empowers the liquidator to decide whether the costs of liquidation including his remuneration and any expenses incurred with the sanction of the Controller for employing any establishment and obtaining assistance from an actuary or an auditor, to be payable out of the assets of the society or not When he

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1 (1960) 1 M L J 146 : 1960 Com Cases 123

2 *Maryam Singh* v *Official Liquidator* 1926 Lah 414

3 *See* also Notes under S 70 and Notes under S 87A, *supra*.

4 *See* also Rule 305 Companies (Court) Rules 1959

5 For form of statement and notice of meeting *see* Rules 328 and 329 of the Companies (Court) Rules 1959

decides that such expenses have to be payable out of such assets, they shall have priority over other claims payable out of the assets of the society Section 476 of the Companies Act confers discretion on the court, in the event of the assets being insufficient to satisfy the liabilities, to make an order for the payment of costs, charges and expenses out of the assets in such order of priority *inter se* as the court thinks just But S 520 of that Act provides that all costs, expenses, etc , in voluntary winding up, including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims but subject to the rights of secured creditors, if any [1]

9 **Administration and distribution of assets sub-section (9) —** Sub-section (9) provides that in administering and distributing the assets of the society the liquidators must have regard to any directions that may be given by the creditors or contributories at a general meeting or by the Controller, that is to say, whatever directions may be given to him by the creditors or contributories at a general meeting or whatever directions are given to him by the Controller in the matter of administering and distributing the assets of the society, the liquidator has to follow same He cannot administer and distribute the assets contrary to the said directions

Section 511 of the Companies Act provides for distribution of property of the company , section 520 provides for payment of costs in voluntary winding up and section 530 provides for preferential payments in winding up The following debts shall have priority to other ones

(*i*) all revenues, taxes, cesses and rates due to the Government or to a local authority,[2]

(*ii*) all wages and salaries of any employee not exceeding four months and any compensation payable under Chapter V-A of the Industrial Disputes Act, 1947,[3]

(*iii*) all accrued holiday remuneration becoming payable to any employee ,

(*iv*) all contributions payable under the Employees, State Insurance Act, 1948 ,

(*v*) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees ,

(*vi*) expenses of any investigation held,

(*vii*) amounts due in respect of any compensation under the Workmen's Compensation Act, 1923, subject to the exception mentioned in clause (*a*) of section 530 (1) ,

(*viii*) costs and expenses of winding up ,[4]

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1 For the meaning of the word assets see *Motilal Shivlal* v *Poona Cotton etc Co* 42 Bom 215 for the meaning of the expression all other claims see *Re Sanitary Burial Association* (1900) 2 Ch 289 , *see* also *In re Massey* (1870) 9 Eq 367

2 *See* S 530 (1) (*a*) and *In re Bihar Bolts etc Engineering Works Ltd* , 1959 Pat 537 *In the matter of Suburban Bank Ltd* 1953 Cal 487 but see *Joint Official Liquidator* v *Commissioner of I T* , (1954) 1 M L J 282 1954 Mad 858

3 *See* S 530 (1) (*b*) and *Price* v *Chandrasekaran* 1951 Mad 987 , but *ex gratia* payments to employees are not entitled to priority *Vijay Cardboard Co Ltd* v *Collector* 1957 Andhra 725

4 See *Official Liquidator U P Union Bank Ltd* v *Ramtshwaran Nath*, 1960 Com Cases 116 S C *see* also Note 4 under S 55 , Note 7 under S 56 Notes 4 and 5 under S 57, *supra*

Dissolution of provident society

93 (1) As soon as the affairs of a provident society are fully wound up, the liquidator shall prepare an account of the winding up showing how the winding up has been conducted and the property of the society has been disposed of and shall call a meeting of the members, creditors and contributories for the purpose of laying before it the account and giving any explanation thereof

(2) Notice of the meeting shall be sent to each person individually and shall be advertised in the local official Gazette and in at least two newspapers circulating in the State in which the society is situated

(3) Within one week after the meeting, the liquidator shall send to the Controller a copy of the account and shall report to him the holding of the meeting and its date and shall forward to him a copy of the proceedings of the meeting

(4) The Controller may return the account to the liquidator if it is incomplete or unsatisfactory and may require the liquidator to carry out any further steps necessary to complete the winding up and the liquidator shall comply with such requirement and shall submit a further report to the Controller within six months

(5) If the Controller is satisfied that affairs of the society have been fully wound up, he shall register the account of the liquidator who shall forthwith make over to the Controller sums, if any, remaining undisposed of and on the expiry of three months from the registering of the account, the Controller shall declare the society dissolved and cause the dissolution of the society to be notified in the local official Gazette, and the liquidator shall thereupon be discharged from further responsibility

(6) If within a period of five years from the date on which any sums have been made over to the Controller under sub-section (5), an order of a Court of competent jurisdiction has not been obtained at the instance of any claimant to such sums for their disposal, the said sums shall become the property of Government

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Liquidator's duties on the affairs being fully wound up sub-sections (1) (2) and (3)*
4 *Duty of Controller on a report from the liquidator sub-section (4)*
5 *Controller's further duty on society's affairs being fully wound up sub-section (5)*
6 *Any sum with the Controller remaining unclaimed for five years to escheat to Government sub section (6)*
7 *Dissolution under the English Act*

1 **Legislative changes**—The word "State" occurring in sub section (2) was substituted by A O of 1950 and the word "Controller" occurring in sub-sections (3), (4), (5) and (6) were substituted by Act XLVII of 1950

2 **Object and scope**—The object of the section is to lay down the procedure by which the dissolution of a provident society has to be effected after the completion of the winding-up proceedings In this regard the section imposes certain duties on the liquidator and also on the Controller The latter is empowered to return the account of the completion of the winding up proceedings to the liquidator with directions to take further steps, when the liquidator has, after complying with the directions, to submit a further report to the Controller The section provides for the supply to the Controller of an account of the proceedings of the meetings of members, creditors and contributories It also gives five years' time which must elapse before unclaimed sums escheat to Government [1]

Section 481 of the Companies Act, 1956, speaks of the court's power to make an order of dissolution of company in cases where affairs of the company have been completely wound up or where for want of funds the liquidator cannot proceed on with the winding up or where the court thinks it just and reasonable for any other reason to make an order of dissolution of the company Section 497 of the said Act also speaks of dissolution of the company in case of voluntary winding up and the duties respectively of the liquidator and the Registrar thereto

3 **Liquidator's duties on the society's affairs being fully wound up; sub sections (1), (2) and (3)**—Sub sections (1), (2) and (3) of this section define the liquidator's duties soon after the affairs of the provident society are fully wound up His duties as defined in those sub-sections are—

(i) he has to prepare an account of the winding up showing (*a*) how the winding up has been conducted and (*b*) how the property of the society has been disposed of,

(ii) he has to convene a meeting of the members, creditors and contributories, its purpose being to lay before it the account and giving any explanation thereof,

(iii) he has to send notice of the meeting to each person individually and to advertise same in the local official Gazette and in at least two newspapers circulating in the State in which the society is situated, and

(iv) within one week after meeting, he has to send to the Controller a copy of the account and to report to him the holding of the meeting and its date and has to forward to him a copy of the proceedings of the meeting

Sub-sections (1), (2) and (3) of section 497 of the Companies Act, 1956, practically impose the same duties on the liquidator as soon as the affairs of the company are fully wound up with this difference that notice of meeting need not be sent individually to each person and penalty is provided where the liquidator fails to send the account and return of the meeting to the Registrar within the time specified in sub-section (3) of that section

The expression "fully wound up" means "as far as the liquidator can wind them up" that is, when the liquidator has disposed of the assets as far as he can realise them, got in the calls as far as he can enforce them paid the

1 *See* Select Committee Report

debts as far as he is aware of them and done all that he can do in winding up the affairs, continuing contractual obligations may make a dissolution impossible "[1]

4 Duty of the Controller on a report from the liquidators, sub-section (4) - Sub section (4) invests the Controller with the discretion to return the account received from him about the affairs of the society being fully wound up only on the grounds that it is incomplete or it is unsatisfactory In returning the said account the Controller has the power to require the liquidator to carry out any further steps necessary to complete the winding up The liquidator on his part has the duty to comply with the Controller's requirement and has to submit a further report to him within six months There is no provision in section 497 of the Companies Act, 1956, empowering the Registrar to return the account to the liquidator as is provided in this sub-section But proviso to sub section (5) of the said section gives discretion to the court, either on the application of the liquidator or of any other person appearing to the court to be interested, to make an order deferring the date at which the dissolution of the company is to take effect, for such time as it thinks fit But it may be noted that after dissolution a further and complete winding up cannot be asked for,[2] although section 559 of the Companies Act, gives the court discretion to make an order declaring the dissolution void at any time within two years after the dissolution under the circumstances mentioned in that section The effect of the order of the court under this section is that it makes the dissolution void *ab initio*, *i e*, all consequences resulting from the dissolution are avoided [3]

5 Controller's further duty on society s affairs being fully wound up sub section (5) —Sub-section (5) clothes the Controller with further duties which he has to perform when he is satisfied that the affairs of the society have been fully wound up His duties in this regard are—

(*i*) he has to register the account of the liquidator who has to return to him any sums remaining undisposed of

(*ii*) he has to declare the society dissolved on the expiry of three months from registering of the liquidator s account, and

(*iii*) he has to cause the dissolution of the society to be notified in the local official Gazette

On the Controller's performing his aforesaid duties with regard to the dissolution of the society, the liquidator shall be discharged from further responsiblity in the matter of the winding up of the society

Sub section (5) of section 497 of the Companies Act also provides that the Registrar, on receiving the account and return from the liquidator, shall forthwith register them and on the expiration of three months from such registration, the company shall be deemed to be dissolved

6 Any sum with the Controller remaining unclaimed for five years to escheat to Government, sub section (6) —Sub-section (6) lays down the circumstances under which any sums remaining with the Controller being made over to him by the liquidator shall be escheated to the Government The circumstances mentioned in the sub-section are that if within a period of five years from the date on which any such sums have been made over to the Controller by the liquidator under sub-section (5) of this section and if no

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1 Buckley Companies Act 12th Ed p 596
2. *Coxon* v *Gorst* (1891) 2 Ch 73
3 See *Morris* v *Harris* (1927) A C 252 *Re Dixon Ltd* (1947) 1 All E R. 279

order of a Court of competent jurisdiction has been obtained by any claimant to such sums for their disposal, the said sum shall become the property of the Government

Upon dissolution, all the property of the company vests in the Crown as *bona vacantia*, subject to the power of the Crown to disclaim [1] This includes an equity of redemption to leasehold property [2] But the principle of *bona vacantia* does not affect property held by the company on trust [3]

7 **Dissolution under the English Act**—The dissolution of friendly societies or their branches can be made by the vote of five-sixths in value of the members, and of any person entitled to benefit and whose claim has not been satisfied nor provided for and in case of a branch with the consent of the central body [4]

The dissolution is effected by an instrument of dissolution which must set out the following (i) the liabilities and assets, (ii) the number of members and their interests, (iii) the claims of creditors and the provisions for their payment, and (iv) the intended appropriation and division of the funds The instrument of dissolution must be registered A registered society or branch may also be dissolved by award of the Registrar after an investigation into its affairs [5] Regarding surplus funds belonging to the Crown as *bona vacantia*, see *Cunnack* v *Edwards* [6], *Braithwaite* v *Attorney General* [7]

Nomination and assignments

94 (1) The provisions of section 38 and section 39 relating to assignment, transfer and nomination in the case of life insurance policies shall, subject to the provisions of this section, apply to policies of insurance issued by any provident society covering any of the contingencies specified in clause (*a*) of sub-section (2) of section 65

(2) *[Omitted by Act XLVII of 1950]*

Notes

The words and figures "of sub-section (2) of" occurring in sub-section (1) were inserted by Act VI of 1946 Sub section (2) was omitted by Act XLVII of 1950 The said sub-section ran as follows "No nomination shall be valid if the person nominated is not the husband, wife father mother, child, grand child, brother, sister, nephew or niece of the holder of the policy"

This section permits the policies of insurance of a provident society covering the contingencies mentioned in clause (*a*) of sub section (2) *i e*, contingencies of birth, marriage or death, to be transferred or assigned or nomination can be made thereof in the same manner as life insurance policies as provided in sections 38 and 39 of the Act, *i e*, in matters of transfer, assignment and nomination of policies of insurance covering the contingencies of birth, marriage or death of a provident society should be governed by sections 38 and 39 of the Act It may be noted that after the omission of

1 *See* Sections 554 and 555 English Companies Act 1948
2 *Re Wells Shrewsbury Hanham* v *Howard* (1933) Ch 29
3 *Re General Accident Corporation* (1904) 1 Ch 147 *Re Streatham Manor Limited Ltd* (1938) 1 All E R 162, *see* also Palmer's Company Law, 20th Ed. pp 733-734.
4 S 78 F S Act 1896
5 S 20 of the 1937 Act
6 (1896) 2 Ch 679
7 (1905) 1 Ch 510 *see* also MacGillivray Insurance Law 3rd Ed Vol I, pp 76-77

sub-section (2) by Act XLVII of 1950 the expression "subject to the provisions of this section" seems redundant now and should have been deleted by the said Amendment Act of 1950 [1]

PART IV

MUTUAL INSURANCE COMPANIES AND CO OPERATIVE LIFE INSURANCE SOCIETIES

95 (1) In this Part—

Definitions

(*a*) "Mutual Insurance Company" means an insurer, being a company incorporated under the Indian Companies Act, 1913, or under the Indian Companies Act 1882, or under the Indian Companies Act, 1866, or under any Act repealed thereby which has no share capital and of which by its constitution only and all policy-holders are members, and

(*b*) "Co-operative Life Insurance Society" means an insurer being a society registered under the Co-operative Societies Act, 1912, or under an Act of a State Legislature governing the registration of co-operative societies which carries on the business of life insurance and which has no share capital on which dividend or bonus is payable and of which by its constitution only original members on whose application the society is registered and all policy-holders are members

Provided that any Co-operative Life Insurance Society in existence at the commencement of this Act shall be allowed a period of one year to comply with the provisions of this Act

(2) Notwithstanding anything contained in sub-section (1), other co-operative societies may be admitted as members of a Co-operative Life Insurance Society, without being eligible to any dividend, profit or bonus

(3) A State Government may, subject to any rules made by the Central Government, empower the Registrar of Co-operative Societies of the State to register co-operative societies for the insurance of cattle or crops or both under the provisions of the Co-operative Societies Act in force in the State

(4) A State Government may make rules not inconsistent with any rules made by the Central Government to govern such

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1 *See* Notes under sections 38 and 39 *supra* and also the following cases *Sutor* v *Farmsgdon Reliance Mutual Insurance Society Ltd* (1953) 1 A C , p 5 *Morton* v *French* 1908 S C 171 ; *Bennett* v *Slater* (1899) Q B 45 *In the goods of Baxter* (1903) 1 12 and also cases cited in MacGillivray Insurance Law 5th Ed , at pp 46-47

societies, and the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies

SYNOPSIS

1 *Mutual Insurance Company, what is?*
2 *Co-operative Life Insurance Society, what is?*
3 *Other Co-operative Societies may be admitted as members sub-section (2).*
4 *Co-operative Societies for cattle or crops insurance sub-section (3)*

1 Mutual Insurance Company, what is?—"Mutual Insurance Company" has been defined to be an insurer, which is a company incorporated under the Companies Act, 1956, or under any of its previous Acts repealed thereby having no share capital and of which by its constitution only all policy holders are members But it is a special class of insurer which is governed by Part IV of the Act and not like other insurers governed by Part II thereof

The association of mutual insurers was the oldest type of the mutual insurance company It consisted of an association of individuals who used to contract with one another that each would contribute upon an agreed basis to the insurance claims of the other members Such an association is neither a partnership nor a corporation and the liability of each member is limited to a several, or individual, liability for the agreed proportion of each claim[1] Such liability of the members may be unlimited or may be limited in various ways The contributions to the claims of other members may be by way of a fixed premium or by way of calls or assessments. The liability of a member to pay calls or assessments may be unlimited or it may be limited by a table of maximum rates defining the maximum sum which any member can be called upon to pay in respect of claims in any one year[2] But a mutual company could also be formed as a common law partnership when the liability of members to pay the insurance claims was joint and the members may be liable to outside creditors upon contracts made by officers or agents of the company[3]

Pure mutual associations may be of three kinds—

(i) those which are not themselves insurers but whose members are each of them insurer and assured, every one of them being liable to contribute proportionately according to the amount of his own insurance to the losses of other members[4]

(ii) those which are themselves the insurers but of which the profits belong entirely to the policyholders who are the members[5]

(iii) those which are themselves the insurers but of which the profits belong entirely to certain classes of policyholders only who are the members[6]

As the provisions of this Act have been made applicable to mutual insurance companies as defined in Part IV, there is certain confusion in the way

1 *Re Canada Settlers Loan & Debenture Co.* (1894) 23 Ont. R. 1; *Re Canadian Mutual Aid Association* (1883) 8 A.R. 1; *Re Provincial Provident Institution* (1892) 21 Ont.

so also the English Insurance Companies Act, 1958, have been applied to those mutual insurance companies also in certain modified way as mentioned in Part I of the Second Schedule to the said Act

A mutual insurance company may also be defined as a co operative enterprise, wherein the members constitute both insurer and insured, and contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and wherein the profits are divided among the members in proportion to their interests It is an enterprise, the distinguishing feature of which is the mutuality of co operation of the members who are united for that purpose and each of whom takes a proportionate part in the management of its affairs, being at once insurer and insured, and participate alike in its profits and losses, and all of whom are policy-holders Other essential characters are that it provides insurance to its members substantially at cost, its democratic ownership and control and the common equitable ownership by the members of the assets of the company The actual nexus of its rights and duties, not its name or form, decides whether an organization is a mutual company [1]

The difference between joint-stock and mutual insurance companies is that former are corporations with capital stocks organised for the profits of their stock holders who need not be policy holders while the latter do not have such capitals but depend on their premiums [2] But a mutual company may somewhat resemble a partnership as the insured becomes a member of the company by virtue of his policy, is entitled to a share of the profits and is responsible for the losses to the extent of his premium paid or agreed to be paid , yet it is not a partnership in the strict legal sense of the term [3]

The creation and existence of mutual insurance companies are primarily matters of statutory regulation In the absence of a statute such companies may exist without incorporation But this section requires that a mutual insurance company must be incorporated under the Companies Act without a share capital and hence without fulfilling the requirements of the Companies Act and the requirements contained in this part, a mutual insurance company cannot validly do any insurance business As a prerequisite to the right to organize and transact business a mutual insurance company has to comply strictly with the conditions laid down in those Acts

2 Co operative life insurance society, what is?—A co operative life insurance society as defined in this section means an insurer which must be (*a*) a society (*i*) registered under the Co-operative Societies Act 1912 (II of 1912), or (*ii*) registered under an Act of a State Legislature governing the registration of co-operative societies (*b*) which must carry on the business of life insurance, (*c*) which must not have any share capital on which dividend or bonus is payable and (*d*) by its constitution only original members on whose application the society is registered and all policy-holders are members But any co-perative life insurance society in existence at the commencement of this Act shall come within the above definition if it complies with the provisions of this Act within one year from its commencement

The creation and existence of a co-operative life insurance society are also primarily matters of statutory regulations specially of this part of this Act and the Co-operative Societies Act 1912 and unless such a society

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1 44 Corpus Juris Secundum pp 644 645 and *see* the cases cited therein

2. See *Mygatt* v *New York Protection Insurance Co* 21 N Y 52 *Moncure* v *Atlantic Life Insurance Co* 283 U S 823

3 *Pink* v *Town Taxi Co* 138 Maine 44

complies with the requirements of these two Acts it cannot validly do any insurance business nor can it make any valid and binding contracts Hence as a preliminary to its complete organization it must satisfy the requirements of both the statutes Thus for a co-operative society to be registered under the Co operative Societies Act, 1912, it must consist of at least ten persons who must be *sui juris*, and must have as its object the promotion of the economic interests of its members in accordance with co-operative principles Although under the said Act a 'member' of such society includes a person joining in the application for the registration of a society and a person admitted to membership after registration in accordance with the by-laws of the society but a co operative life insurance society under this Act must consist of the original members, i e , the members joining in the application, and the policyholders and hence members admitted after registration cannot be called members of the co-operative insurance society within the meaning of this definition [1]

The registration of the society under the Co-operative Societies Act, 1912, renders it a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution [2] It has been said that the by laws of a co-operative society correspond to the articles of association of a company registered under the Companies Act and the managing committee of such a society correspond to the Board of Directors of a company Both in the case of a co-operative society and a company of a company registered under the Companies Act, the general powers are the same [3] Such registered societies have their office with respect to the address of societies audit and to their members [4] They are also subject to restrictions on making a loan to any member and on receiving deposits or loans from persons who are not members [sub-sections (29) and (30)] The Registrar of Companies is empowered to hold an inquiry into the affairs [illegible] condition of a registered society (section [illegible] restricted to invest their funds otherwise than as provided by section 32 and no part of their funds shall be applied for the payment of any dividend or otherwise among their members [illegible] also empowered to cancel the registration of a society where the number of its members is reduced below seven [illegible] tion and winding up of a registered society [illegible] with the provisions of sections [illegible] to governing registration of [illegible] as if assets and liabilities of societies [illegible] isions Thus, co-operative societies are [illegible] set at 1912, just as companies are [illegible] ctions of both the Acts have been [illegible] for such power does not [illegible] ounts and either of the societies [illegible] d 100 and 'member' in the Companies [illegible] sections of with shareholders [illegible]

1 *See* sections 4 [illegible] operative

2 S 18 [illegible]

3 Section [illegible] (1911) [illegible] L C [illegible]

4 Sections [illegible]

corporation has a legal personality and it has to be sued in its corporate name,[1] but where the society is unregistered the suit should be brought against all the members of the society [2]

3 **Other co operative societies may be admitted as members, sub-section** (2) —Sub-section (2) of this section lays down that other co-operative societies may be admitted to membership of a co-operative life insurance society although sub-section (1) provides that only original members on whose application the society is registered and all policy holders are members But other co-operative societies admitted to membership of a co-operative life insurance society shall not be eligible to any dividend, profit or bonus This sub-section gives facility to other co-operative societies to become members of a co-operative life insurance society but these are not extended to any individual except he becomes a policy holder of the society

Under the Co-operative Societies Act, 1912, any person may be admitted to membership of a co-operative society after its registration in accordance with the by-laws and any rules But in the case of a registered society with a limited liability other registered societies may become its members provided the latter do not each hold more than such portion of the share capital of the society, subject to a maximum of one fifth as may be prescribed by the rules and do not have or claim any interest in the shares of that society exceeding one thousand rupees [3]

4 **Co operative societies for cattle or crops insurance, sub section** (3) —Sub-section (3) empowers a State Government to confer powers on the Registrar of Co-operative Societies of that State to register co operative societies for the insurance of cattle or crops or both under the Co operative Societies Act in force in that State But in conferring such powers on the Registrar the State Government has to subject the Registrar to any rules made by the Central Government in this behalf

Ordinarily, the Registrar of Co-operative Societies has been empowered to register a society under the Co-operative Societies Act, 1912 when an application is made to him by at least ten persons above the age of 18 years and they reside in the same village town or in the same group of villages or are members of the same tribe, class, caste or occupation [4] The objects of such societies in order to get them registered must be the promotion of economic interests of its members in accordance with co operative principles of a society established with the object of facilitating the operations of such a society [5]

Cattle insurance societies are defined by the Friendly Societies Act as societies for the purpose of insurance to any amount against loss of meat, cattle, sheep lambs swine, horses or other animals by death from disease or otherwise [6] Cattle insurance is also known as live stock insurance which is directed towards the insurance of horses and cattle These animals are insured unlike those of other properties against death or total disablement from accident, disease and fire [7] The risks are divided into various classes according as

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1 *Narayana Pillai* v *Easwara Pillai* 1961 Ker 258
2 *Nalin Behari Roy* v *Biseswar Bhattacharyya* 1961 Cal 393
3 Section 5 of the said Act
4 Sections 6 and 8 of the said Act
5 Section 4 of the said Act
6 Section 5 (3) of the said Act
7 *Attorney-General* v *Cleobury* (1849) 4 Exch 65 *Burridge & Son* v *F H Haines & Sons Ltd* (1918) 87 L J K B 641

the animals are put to the use or service of the owner Thus, the risk run by a hunter or polo pony is greater than that of a carriage horse and the same becomes a worse risk than a horse used in a light two-wheeled vehicle when the former is used to carry loads The risk of a hackney carriage horse is greater than the horse of a private carriage But the risks such as caused by invasion, foreign enemy, riot or civil commotion are excluded [1] Mere injury which does not lead to death is not, except in special cases, covered [2] The age of the animal is important because it has certain bearing on the premium charged as in life insurance The value of the insurance will be upon the market price of the animal Sometimes the assured has to bear a portion of the loss himself, commonly a quarter of such loss The death is usually required to be certified by a veterinary surgeon [3]

Insurance of crops provides indemnity against loss of crops, particularly standing or growing crops against hailstorms rain flood, cyclone, tornado or windstorm Such kind of insurance also comes within cyclone and tornado insurance[4], rain insurance[5] and hail insurance [6]

4 **Power of the State Government to make rules, sub-section (4)** — Sub-section (4) confers discretionary power on the State Government to make rules to govern co-operative life insurance societies, co-operative cattle or crop insurance societies and mutual insurance companies But such rules must not be inconsistent with any rules made by the Central Government This sub-section further provides that the provisions of this Act, in so far as they are inconsistent with those rules, shall not apply to such societies, *i e* the rules made by the State Government or the Central Government would override the provisions of this Act if the latter are inconsistent with the former

Application of Act to Mutual Insurance Companies and Co-operative Life Insurance Societies

96 The provisions of sections 6 and 7 and of sub-section (2) of section 20, so far as those provisions are inconsistent with the provisions of this Part, shall not apply, and the provisions of this Part shall apply to Mutual Insurance Companies and Co-operative Life Insurance Societies

Notes

Section 6 speaks of the requirements as to capital of an insurer, section 7 speaks of the deposits required to be made by an insurer and sub-section (2) of section 20 speaks of supply of copies of accounts, statements and abstract to any shareholder or policy holder This section lays down that in the application of the provisions of those sections and of sub-section (2) of section 20 to Mutual Insurance Companies and Co-operative Life Insurance Societies if they are consistent with any provisions contained in this Part the provisions contained in the latter shall prevail The object of the section is to set at rest any conflict of provisions contained in this Part and in those sections of Part II of the Act In the succeeding sections of this Part provisions for working capital deposits required to be made and supply of copies of accounts and other documents have been made respectively in sections 97, 98 and 100 and hence provisions with regard to those matters contained in the said sections of

1 See *German v Hand in Hand Insurance Co*, (1877) 1 R 11 C L 224
2 *Jacob v Gouller* (1902) 87 L T 26
3 *Burridge and Son v F H Haynes and Sons Ltd* (1918) 87 L J K B 641, *Shiells v Scottish Assurance Corporation* (1889) 16 R (Ct of Sess) 1014
4 *Holmes v Phoenix Insurance Co* 98 I 240
5 *Merchants Manufacturers' Inter Insurance Alliance v Hansen* 258 S W 257
6 *Barry v Farmers Mutual Insurance Association* 110 Iowa 483

this Part shall apply to mutual insurance companies and co-operative life insurance societies and not the provisions of those sections, *viz*, sections 6 and 7 and sub section (2) of section 20 contained in Part II of the Act

Working capital of Mutual Insurance Companies and Co-operative Life Insurance Societies

97 No Mutual Insurance Company incorporated after the 26th day of January, 1937, and no Co-operative Life Insurance Society registered after that date under the Co-operative Societies Act, 1912, or under an Act of a State Legislature governing the registration of co-operative societies shall be registered under this Act, unless it has as working capital a sum of fifteen thousand rupees, exclusive of the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act and of the preliminary expenses, if any, incurred in the formation of the company or society

Notes

Unlike an insurer incorporated after 26th January, 1937, requiring a working capital of a net sum not less than Rs 50,000 exclusive of deposits to be made before registration and preliminary expenses in the formation of the company as provided in section 6 in Part II of this Act, this section lays down that a Mutual Insurance Company incorporated after 26th January, 1937 and a Co-operative Life Insurance Society registered after that date under the Co operative Societies Act 1912 or under an Act of a State Legislature governing the registration of co-operative societies, must have a working capital of a sum of Rs 15 00) which sum must be exclusive of—

(i) the deposit to be made before or at the time of application for registration in accordance with sub-section (2) of section 98 of this Act, and

(ii) the preliminary expenses, if any, incurred in the formation of the company or society, as the case may be [1]

Deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies

98 (1) Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, in respect of the life insurance business carried on by it in the States, deposit and keep deposited with one of the offices in India of the Reserve Bank of India, for and on behalf of the Central Government, a sum of two hundred thousand rupees in cash or in approved securities estimated at the market value of the securities on the day of deposit

(2) The deposit referred to in sub-section (1) may be made in instalments, of which the first shall be a payment made before or at the time the application for registration under this Act is made of not less than twenty-five thousand rupees or such sum as with any deposit previously made by the insurer under the provisions of the Indian Life Assurance Companies Act, 1912,

1 *See* also Notes under S 6 *supra*

brings the amount deposited up to not less than twenty-five thousand rupees and the subsequent instalments shall be annual instalments made before the expiry of each subsequent calendar year of an amount in cash or in approved securities estimated at the market value of the securities on the day of payment of the instalment, equal to not less than one-third of the premium income of the preceding calendar year as shown in the revenue account

(3) The provisions of sub section (7) of section 7 shall apply in respect of a Mutual Insurance Company and a Co-operative Life Insurance Society as if for the words "under the foregoing provisions of this section" the words and figures "under the provisions of section 98" were substituted

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Deposits of Mutual Insurance Companies and Co-operative Life Insurance Societies, sub section* (1)
4 *Initial deposit and payment by instalments, sub-section* (2)
5 *Applicability of sub section* (7) *of section 7 to Mutual Insurance Companies and Co operative Life Insurance Societies, sub section* (3)

1 Legislative changes —The words "the States" were substituted by A O, 1950 The words "of not less than twenty five thousand rupees" in sub-section (2) were substituted for the words "to twenty five thousand rupees" by Act XIII of 1941, the words "to not less than twenty five thousand rupees" were substituted for "to twenty five thousand rupees" by the said Act, the words "calendar year" were substituted for the word "year" by Act XI of 1939, and the words "premium income of the preceding calendar year as shown in the revenue account" were substituted by Act VI of 1946

Sub-section (3) of the section was added by Act XIII of 1941

2 Object and scope —The object of the section is to modify the requirement of deposits to be made by Mutual Insurance Companies and Co-operative Life Insurance Societies by a lesser amount than what is required of an insurer under section 7 of the Act It lays down the total sum to be deposited, the initial deposit to be made before or at the time of application for registration under this Act and the instalment thereafter to be paid It also lays down that such deposits can be made in cash or in approved securities It further applies the provisions of sub section (7) of section 7 regarding the transfer of deposit of securities already made with the Controller of Currency under the Life Assurance Companies Act, 1912, to the Reserve Bank to societies and companies registered under this Part of the Act.

3 Deposits of Mutual Insurance Companies and Co-operative Life Insurance Societies, sub-section (1) —Sub-section (1) requires of every Mutual Insurance Company and every Co-operative Life Insurance Society to keep deposited a sum of Rs 2,00,000 either in cash or in approved securities with one of the offices in India of the Reserve Bank of India in respect of the life insurance business carried on by it in the States The said sum has to be kept deposited for and on behalf of the Central Government and if it deposits the sum in approved securities the same must be estimated at the market value of the securities on the day of deposit The same amount has also to

left deposited by every insurer where the business done or to be done is life insurance only under clause (*a*) of sub section (1) of section 7 [1]

4 **Initial deposit and payment by instalments, sub section (2)** — Deposit of Rs 2 00,000 required to be made by every Mutual Insurance Company and every Co operative Insurance Society may be made by instalments But the first such instalment has to be made and paid before or at the time the application for registration under this Act is made and the amount of such instalment must not be less than Rs 25,000, that is to say, a mutual insurance company or a co-operative life insurance society must deposit as first instalment of its deposits out of its total deposits of Rs 2,00 000, a sum not less than Rs 25,000 either before or at the time of its registration under this Act in respect of the life insurance business But facility has been given to it if it had already deposited any sum previously under the Indian Life Assurance Companies Act 1912, to bring it in to make its initial deposit to amount to not less than Rs 25,000

After the first or the initial deposit is made in the manner aforesaid, other deposits have to be made by the company or the society, as the case may be, by annual instalments and such annual instalments have to made before the expiry of each calendar year subsequent to the calendar year for which the deposit is made The amount of annual instalment must be an amount equal to not less then one third of the premium income in the preceding calendar year as shown in the revenue account of the mutual insurance company or the co-operative life insurance society concerned, as the case may be The company or the society, as the case may be has the option to deposit these amounts of yearly instalments calculated as above either in cash or in approved securities and in the case of the latter the value of the securities has to be estimated at their market value as on the day of payment of the instalment [2]

5 **Applicability of sub section (7) of section 7 to Mutual Insurance Companies and Co-operative Life Insurance Societies, sub section (3)** — The effect of applying the provisions of sub section (7) of section 7 by this sub-section to mutual insurance companies and co-operative life insurance societies is that the securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912, stands transferred to the Reserve Bank of India and must, to the extent of their market value as at the commencement of this Act, be deemed to be deposited under this Act as the instalment or as part of the instalment to be made under this section before the application for registration is made whether any such application is or is not in fact made [3]

Prohibition of loans

98A The provisions of section 29 shall apply to Co-operative Life Insurance Societies as they apply to other insurers

Notes

This section was inserted by Act VI of 1946 and the words "so however that in such application the reference in the second proviso to sub-section (1) of the said section to the commencement of this Act shall be constructed as references to the commencement of the Insurance (Amendment) Act, 1946" occurring at the end of the section were omitted by Act XLVII of 1950

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1 *See* Note 3 under S 7 *supra*

2 For deposits to be made and the instalment of payment in case of insurer *see* Note 5 under S 7 *supra*

3 *See* Note 9 under S 7, *supra*

This section has applied the provisions of section 29 to Co-operative Life Insurance Societies only and not to Mutual Insurance Companies The effect of the application of the provisions of section 29 is that a Co-operative Life Insurance Society is prohibited from granting loans to any person having some concern in the management of the affairs of the society, that is to say, it cannot grant loan to any member of the managing body including its President or to any manager or officer concerned with the management of its affairs or to any auditor or actuary either on hypothecation of property or on personal security or otherwise But loans to them on the security of life policies issued by the society within their surrender value are permitted So also loan to any banking company is not barred [1]

Section 29 of the Co operative Societies Act, 1912, restricts granting of loans by registered societies Ordinarily, a loan under that section cannot be given to any person other than a member, but with the general or special sanction of the Registrar, a registered society may make loans to another registered society The State Government has been empowered to prohibit or restrict the lending of money on mortgage of immovable property and a registered society without a sanction from the Registrar cannot also lend money on the security of movable property Some State Acts provide making liable such members of the committee as have voted for the grant of any illegal loans jointly and severally for the amount thereof and costs Where the Board of Directors or the general body of members grant a loan in appeal which was refused by the committee being illegal, such members of the Board of Directors or the general body, as the case may be who vote for the grant of such loan shall also be liable jointly and severally for the amount thereof and costs [2]

Sub-section (6) of section 29 of this Act provides for the liability of defaulting directors, managers or other officers in the matter of loans [3]

Transferees and assignees of policies not to become members

99 No transferee or assignee of a policy issued by an insurer to whom this Part applies shall become a member of a Mutual Insurance Company or a Co-operative Life Insurance Society merely by reason of any such transfer or assignment

Notes

In the definitions of a mutual insurance company and a co-operative life insurance society it has already been noticed that all policy holders are members but this section lays down that a transferee or an assignee of a policy issued by either the said company or the said society must not be admitted to its membership by virtue of such transfer or assignment of the policy to him Hence it follows that as a policy holder transfers or assigns his policy to another he also loses his membership from the company or the society as the case may be, and that other also cannot claim to be a member therein

Publication of notices and documents of mutual Insurance Companies and Co-operative Life Insurance Societies

100 Notwithstanding the provisions of section 79 and section 131 of the Indian Companies Act, 1913, a Mutual Insurance Company or a Co-operative Life Insurance Society may, instead of sending the notices and the copies of the balance-sheet,

1 *See* Note 4 under S 29 *supra*
2 See S 29A C P and Berar Act XXXIX of 1948
3 *See* Note 2 and for loans to agents *see* Note 6 under S 23, *supra*

revenue account and other documents which they are required to send to the members under those sections publish such notices together with a summary in the prescribed form of the balance-sheet and revenue account once in a newspaper published in the English language and in a newspaper published in an Indian language circulating is the place where the principal office of the company in situated

Provided that, where any members of the company are domiciled in a State other than that in which the principal office of the company is situated, publication of the notice of the meeting shall be made in a newspaper or newspapers published in the principal languages of that State and circulating therein and any member of the company domiciled in that State shall be entitled on application to the company to receive from it a copy of the balance sheet and revenue account

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Publication of notice, balance sheet, etc*
4 *Summary of balance sheet*

1 **Legislative changes** —The words "publish such notices together with a summary in the prescribed form of the balance-sheet and revenue account' was substituted by Act XLVII of 1950, the word "State" was substituted by A O , 1950, the words "balance-sheet revenue account and" occurring in the second line to proviso in between the words "publication of the" and "notice" were omitted by Act XIII of 1941 and the words "and any member of the company revenue account ' were added by Act XIII of 1941

2 **Object and scope** —The object of the section is to dispense with the duty of a Mutual Insurance Company and a Co operative Life Insurance Society from sending the notice of meeting and the copies of balance sheet, revenue account and other documents to its individual member Its purpose seems to be to save time and expenses, and also to be relieved of inves igating into the vexed question of non receipt of notice and its validity which may have bearing upon the holding of the meeting itself

Section 79 of Indian Companies Act, 1913, amongst others provides that notice of meeting of a company with a business to be transacted has to be served on every member [1] Section 131 of the said Act of 1913 amongst others provides that every company other than a private company shall send a copy of the balance sheet and profit and loss account or income and expenditure account with the auditors report thereon to the registered address of every member of the company [2]

This section lays down that in spite of the provisions in the Indian Companies Act 1913, as aforesaid (now repealed by Companies Act 1956), a Mutual Insurance Company or a Co-operative Life Insurance Society need not send any notice of meeting and the copies of the balance-sheet,

1 For the corresponding provision in the Companies Act 1956 *see* S 172 and for the construction of notice of meeting see *Biswanath Prasad Khaitan* v *New Central Jute Mills* 1961 Com Cas 125

2. For the corresponding provisions in the Companies Act 1956 *see* S 219

etc or other documents to any member It may be noted that a provision like this is necessary for a Mutual Insurance Company which is registered under the Companies Act to relieve it of its responsibilities from sending notice of the meeting and copies of balance sheet, etc to every member, but the provisions of the Companies Act are not applicable to Co operative Life Insurance Societies which are registered under the Co operative Societies Act, 1912, as section 48 of the latter Act would indicate However instead of sending notice and copies of balance-sheet, etc this section provides that such notice together with a summary of the balance sheet and the revenue account of the Mutual Insurance Company and Co-operative Life Insurance Society has to be published in the newspapers in the manner laid down in the section It also provides for publication of the notice, where any of its members is domiciled in a State other than that in which the principal office of the company is situated, in a newspaper in that State

3 **Publication of notice, balance-sheet, etc** —This section confers discretion on every Mutual Insurance Company and Co-operative Life Insurance Society to publish its notice and a summary in the prescribed form of the balance-sheet and revenue account once (i) in a newspaper published in the English language and (ii) in a newspaper published in an Indian language, both the newspapers must have circulation in the place where the principal office of the company is situated, and (iii) in a newspaper or newspapers published in the principal languages of that State where any members of the company are domiciled and in which the principal office of the company is not situated, in such a case only the notice of the meetings needs be published But a member domiciled in a State other than where the principal office of the company is situated is entitled, if an application is made to the company by him, to receive from it a copy of the balance sheet and revenue account

4 **Summary of balance sheet** —The summary of the balance-sheet to be published in pursuance of this section must be in Form XVI [1]

Supply of documents to members

101 Every Mutual Insurance Company and every Co-operative Life Insurance Society shall, on the application of any member made within two years from the date on which any such document is furnished to the Registrar of Companies under the provisions of section 134 of the Indian Companies Act, 1913, or to the Registrar of Co-operative Societies of the State in which the Co-operative Life Insurance Society is registered, furnish a copy of the document free of cost to the member within fourteen days of the application

Notes

This section imposes a duty on every Mutual Insurance Company to supply copies of those documents which were filed with the Registrar of Companies within two years from the date for which application is made to it by the members Such copies are to be furnished to the members free of cost within fourteen days of the application The document to be so furnished free of cost to the members as laid down in section 134 of the Indian Companies Act 1913, are (i) balance-sheet, (ii) profit and loss account, or (iii) income

1 R 33, Insurance Rules, 1933

and expenditure account, (*iv*) annual test of members, and (*v*) summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash and specifying the particulars, such as, the names and addresses of directors, the amount of share capital, number of shares taken, the amount called up, amount of calls paid or remaining unpaid, number of shares forfeited, the total amount of debt, etc as mentioned in clauses (*a*) to (*m*) of sub-section (2) of section 32 of the said Act [1]

Similarly, every Co-operative Life Insurance Society has to supply to its members on their application being made to it within the period, free of costs, those documents which the society filed with the Registrar of the Co operative Societies of the State in which it is registered within 14 days of such application Section 43 (2) (*s*) of the Co-operative Societies Act, 1912, confers powers on the State Government to prescribe the returns to be submitted by a society to the Registrar

PART IV-A

RE-INSURANCE

Re-insurance with Indian re-insurers

101A (1) Every insurer shall re-insure with Indian re-insurers such percentage of the sum assured on each policy as may be specified by the Central Government under sub-section (2)

(2) For the purposes of sub-section (1), the Central Government may, by notification in the official Gazette,—

(*a*) specify the percentage of the sum assured on each policy to be re-insured and different percentages may be specified for different classes of insurance

Provided that no percentage so specified shall exceed thirty per cent of the sum assured on such policy, and

(*b*) also specify the proportions in which the said percentage shall be allocated among the Indian re-insurers

(3) Notwithstanding anything contained in sub-section (1), an insurer carrying on fire insurance business in India may, in lieu of re insuring the percentage specified under sub section (2) of the sum assured on each policy in respect of such business, re-insure with Indian insurers such amount out of the first surplus in respect of that business as he thinks fit, so however, that the aggregate amount of the premiums payable by him on such re-insurance in any year is not less than the said percentage of the premium income (without taking into account premiums on re-insurance added or accepted) in respect of such business during that year

Explanation—For the purposes of this sub-section, the year 1961 shall be deemed to mean the period from 1st April to 31st December of that year

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2 For the corresponding provisions in the Companies Act 1956 *see* S 220

(4) A notification under sub-section (2) may also specify the terms and conditions in respect of any business of re-insurance required to be transacted under this section and such terms and conditions shall be binding on Indian re-insurers and other insurers

(5) No notification under sub-section (2) shall be issued except after consultation with the Advisory Committee constituted under section 101B

(6) Every notification issued under this section shall be laid before each House of Parliament, as soon as may be, after it is made

(7) For the removal of doubts, it is hereby declared that nothing in sub section (1) shall be construed as preventing an insurer from re-insuring with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof in excess of the percentage specified under sub-section (2)

(8) In this section,—

(*i*) "policy" means a policy issued or renewed on or after the 1st day of April, 1961, in respect of general insurance business transacted in India and does not include a re-insurance policy , and

(*ii*) "Indian re-insurer" means an insurer specified in sub-clause (6) of clause (9) of section 2 who carries on exclusively re-insurance business and is approved in this behalf by the Central Government

SYNOPSIS

1 *Legislative enactment*
2 *Objects and reasons*
3 *Scope*
4 *Re insurance, its meaning and nature*
5 *Ceding or accepting company, meaning of*
6 *Re-insurance, a contract* uberrima fides
7 *Re insurance different types*
8 *Has the original assured any interest in re insurance*
9 *Similarities and differences between re insurance and original insurance*
10 *Clauses in re insurance policies, their interpretation*
11 *Re insurer's liability*
12 *Double insurance or over-insurance*
13 *Subrogation*
14 *Re insurance with Indian re insurers, Central Government's powers and duties , sub- ections* (1), (2), (3), (4), (5) *and* (6)
15 *Re insurance with respect to fire insurance business, sub-section* (3)
16 *Re-insurance in excess of specified percentage, permissibility of sub-section* (7)
17 *"Policy" and "Indian re-insurer", definitions of , sub-section* (8)

1 **Legislative enactment**—Part IV-A consisting of sections 101A and 101B was inserted by the Insurance (Amendment) Act, 1951 (Act XI of 1951) by section 2 of the said Amendment Act. The Act came into force on 1st April, 1961

2 Objects and reasons —The Statement of Objects and Reasons is as follows

"Re-insurance is an essential part of general insurance business At present insurance companies operating in India are dependent on companies outside India for a very large part of their requirements in this connection and more often than not enter into disadvantageous arrangements Moreover, re-insurance with companies outside India results in the loss of foreign exchange The present Bill is intended to foster the growth of Indian re insurance companies and also to save foreign exchange "

This Part seeks to provide that every insurance company operating in India must re-insure a certain percentage of its business with Indian re insurance companies approved in this behalf by the Central Government Power is being conferred on the Central Government to fix this percentage but this power will be exercisable only after consultation with the Advisory Committee constituted of five persons having specialised knowledge and experience in insurance business Power is also being conferred on the Central Government to allocate the percentage so fixed amongst the approved Indian re-insurance companies [1]

3 Scope —This section enjoins on every insurer to re-insure with Indian re-insurers certain percentage of the sum assured on each policy Such percentage is to be specified by the Central Government by notification in the official Gazette Such percentage has also to be determined in consultation with the Advisory Board constituted under the provisions of this Part The Central Government has the discretion to specify different percentages for different classes of insurance Simultaneously with specifying the percentage the Central Government should also specify the proportions in which the specified percentage has to be allocated among the Indian re-insurers

This section does not prohibit any insurer from re-insuring with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof exceeding the specified percentage In respect of an insurer carrying on fire insurance business he has been given the facility of re insuring with Indian re-insurers such amount of the first surplus in respect of his fire insurance business provided the aggregate amount of the premiums payable on such re-insurance does not fall below the specified percentage of premium income in any year The section also gives the meaning of the terms 'policy", ' Indian re-insurer" and "the year 1961", respectively, as used in this section It also empowers the Central Government to specify the terms and conditions regarding the business of re insurance required to be transacted by Indian re insurers and other insurers and those terms and conditions shall be binding on them The notification specifying the percentage, its allocation and terms and conditions as stated above have to be laid before both the Houses of Parliament, as soon as it is made

4 Re-insurance its meaning and nature —Re insurance is a contract by which an underwriter accepting a risk displaces some portion of it on the shoulder of another *A* insures with *B* for Rs 10 000 *B* re-insures the same risk to the extent of Rs 5,000 with *C* When the event happens *A* gets Rs 10,000 from *B* and *B* gets Rs 5 000 from *C* *A* cannot claim Rs 5,000 from *C* as re-insurance is a distinct contract made between *B* and *C* to which *A* is neither a party nor a privy Arnold has defined re insurance as "a contract by

1 See *Gazette of India Extraordinary*, Part II, Section 2 dated 14th February, 1961

which, in consideration of a certain premium the original insurer throws upon another the risk for which he has made himself responsible to the original assured to whom, however, he alone remains liable on the original insurance [1]. The insurer inasmuch as he is liable on a policy of insurance, may insure against the risk, which he has taken upon himself. This second contract of insurance is called a contract of re-insurance. In England, contracts of re-insurance were made legal in 1864 by the Revenue (No 2) Act, 1864 now repealed. Under the Marine Insurance Act, 1906, the insurer under a contract of marine insurance has an insurable interest in his risk and may re-insure in respect of it [2]. A policy of re-insurance though effected after the original policy normally attaches from the same time as the original policy [3]. The acceptance of an insurance for an unduly large sum against one event, though desirable in the course of business, endangers the insurer as it may be more than enough to meet the liabilities and it is usual for him to re-insure at least a part of the risk with another insurer [4].

Whether the contract of re-insurance is a contract of indemnity or an independent contract depends upon the nature of the contract itself [5]. Re-insurance being a new insurance effected by a new policy it indemnifies the insurer, in whole or in part, from his previous liability, and in that sense re-insurance is a contract of indemnity [6]. Re-insurance is only a modification of the original contract of insurance. Truly speaking it is an insurance against liability, but like the original contract it has been said to insure the goods, buildings or lives first insured, although the interest differ in two kinds of insurances [6].

5 **Ceding or accepting company, meaning of**.—The company which re-insures some portion of its risk is called the ceding company and the company which accepts such risk is called the accepting company or the re-insurer. The risk is known as re-insurance. To the ceding company it is known as re-insurance placed and to the accepting company a re-insurance received. But in fire insurance, a re-insurance placed is known as 'guarantee obtained' and re-insurance received is known as guarantee placed'.

6 **Re-insurance, a contract uberrima fides**.—Like any other insurance contracts contract of re-insurance is also a contract *uberrima fides*. Utmost good faith of the transaction is required in effecting the contract, as the re-insurer is not in a position to know the risk he undertakes under he contract like the ceding company who undertakes the risk as direct insurance. So it is the duty of the ceding company to disclose all the material facts relating to the risk [7]. The same rules regarding misrepresentation and [illegible] closure apply to contract of re-insurance as they apply to insurance contracts [8]. Warranties also have the same effect in the contract of re-insurance as in the original policy [9]. The duty of disclosure by an insurer in reinsurance is the

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1 S 9 (1) of the said Act.
2. *Morane Insurances Co Ltd* v *Grammar* (1944) 2 All E R 197 C A
3. *In Norwich Equitable Fire* (1887) 3 T L R. 781
4 *Australian Widows Fund* v *National Mutual Life etc* 1914 A C 634
5 *Delver* v *Barnes* (1807) 1 Taunt 48, *Jones* v *Realm Marine* (1872) L R 7 Q B 40 *Traders and General* v *Bankers and General Insurances* (1921) 38 T L R 54
6 *Crawley* v *Cohen* (1832) 3 B. and Ad 478 *British Dominions Insurance* v *Duder* (1915) [illegible]
7 [illegible] *Mutual Life Assurance Co* (1924) 2 K. B. 214; *Locke* v *Bowman* (1920) A C 657; 36 T L R 55 *Foster* v *Mutual Life Assurance Co* (1925) 2 K. B. 295; *Broad* v *Bruce* (1926) 32 L. J. C. P. 81; *Berridge* v *Cowper* (1931) 1 K. B. 293; *Case Ltd* v *Glasgow Insurance Co* (1933) 1 K. B. 1; *Woodall* v *Pearl Assurance Co* (1934) 1 K. B. 173; *Economic Life* v *General Accident* (1935) 2 K. B. 234; *Yorkshire Insurance Co* v *Campbell* (1917) A C 218; *Life Association of Scotland* v *Foster* (1873) 11 M. (Ct. of Sess.) 351
8 [illegible]
9 [illegible] *Life Association of Scotland* (1873) 11 M. (Ct. of Sess.) 351

same as the assured has on the original risk[1] But where the re insurance policy states "subject without notice to the same clauses and conditions as the original policy" it was held that the re-insurer had waived his right to disclosure[2]

7 **Re-insurance, different types** —There are different types of re insurance contract but the chief types in which such contracts may be divided are two, namely, (*i*) facultative, and (*ii*) treaty There is another kind by which re insurance is effected, namely, by means of a 'pool'

A facultative risk is one which is offered individually to another company which may either accept or reject the same as it may choose

A facultative re-insurance goes through numerous stages before it is effected by acceptance of the accepting company Firstly, slips containing only meagre information such as may be available at the time, are circulated by the ceding company to the accepting companies with which the former usually carries on business of re-insurance Secondly, the slip is followed by a request note' which is a formal application by the ceding company for re insurance of a certain definite amount Lastly, a 'take note' is issued which is a formal acceptance by the accepting company when the contract of re insurance is complete A treaty is an agreement made between two offices usually obligatory in its terms, under which one office is bound to cede, and the other office is bound to accept, all risks of a certain nature and for a certain fixed share as laid down in the terms of agreement Such a treaty does not constitute a partnership between the parties, but is a form of re-insurance[3]

Re insurance of certain kind of insurance business is also effected by 'means of a pool' It is an arrangement made amongst a group of offices who agree to put some definite category of risks into hotchpot and to share the aggregate risk Thus, twenty offices agree to pool all business they accept insuring against fire The premiums and the liability of the whole body of twenty would be aggregated and if each office had an equal share, the total share of each would be one twentieth of the whole It may be noted that forfeiture of a policy unlike insurance policy, if no claim is made within a certain period, does not apply to re-insurance policy[4]

8 **Has the original assured any interest in re insurance?** — Ordinarily an original assured has no interest in any re-insurance which his insurer makes with another Both the contracts are distinct and separate The ceding company is entirely liable to the original insurance and it alone has claim against the accepting company But if the policy otherwise provides the latter may become liable to the original insurance[5] A re-insurer can claim the benefit of any compromise made with the original assured even if he has expressed his disagreement to it[6]

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1 *China Traders' Insurance* v *Royal Exchange* (1898) 2 Q B 187 *London General* v *General Marine Underwriters* (1921) 1 K B 104

2 *Property Insurance Co* v *National Protector Insurance Co* (1913) 108 L T 101

3 *English Insurance* v *National Benefit Assurance* (1429) A C 114 *Motor Union* v *Mannheimer etc* (1933) 1 K B 812 *Re Norwich Equitable Fire* (1887) 3 1 L R 781 regarding set-off in connection with insurance treaties in winding up see *Lee and Chapman* (1885) 30 Ch D 216 *Tilley* v *Bowman* (1910) 1 K B 745 *Re City Equitable Fire (No 2)* (1930) 2 Ch 293

4 *Himalaya Assurance Co Ltd* v *Burma Fire and Marine Insurance Co Ltd* 1924 Rang 350

5 See *Re Law Guarantee Trust and Accident Society Ltd Godson's claim* (1915) 1 Ch 340

6 *British Dominions General Insurance Co Ltd* v *Duder* (1915) 2 K B 394 C A *see* also *Re Law Guarantee Trust and Accident Society Ltd Liverpool Mort age Insurance Co Ltd's case* (1914) 2 Ch 617 C A *Law Guarantee Trust and Accident Society Ltd* v *Munich Re-insurance Co* (1912) 1 Ch 138 *Re Edlystons Marine Insurance Co Ex parte Western Insurance Co* (1892) 2 Ch 423

9 Similarities and differences between re-insurance and original insurance —Policies of re-insurance are generally governed by the rules appertaining to the original insurance which is generally known as "head policy". Where a policy is governed by the Insurance Act, a policy of re-insurance should also be governed by that Act Where a question arises as to whether an insurer has power to make contracts of re-insurance, its answer would depend on whether he has power to make contracts of insurance in relation to the same subject-matter [1] With regard to misrepresentation, non-disclosure and warranties the same rule applies to re-insurance as to original insurance [2]

Although the similarities are very close but there is difference between insurance and re-insurance The Privy Council has observed that a condition in the original policy limiting claims to be made within twelve months of the fire occurring does not apply to the contract of re-insurance as the re-insured cannot move in the matter until the actual loss is ascertained between the assured and the original insurer over whom he has no control, and in proceedings between them he cannot intervene [3] Again, variation in the terms of the or ginal insurance absolves the re-insurer from liability on his policy on the principle that "it is one thing for the re-insurer to trust to the policies which the re-insured had made and another to trust to those he might make in future "[4] The re-insurer is not liable for costs of contesting an unfounded claim[5], nor on a compromise made dishonestly or carelessly [6]

10 Clauses in re insurance policies, their interpretation —Clauses in re insurance policies specially in marine insurance are varied Clauses, such as "to pay as may be paid" or "suing and labouring" may be found inserted therein or clauses from original policy, such as "continuation clause" or "warehouse to warehouse clause" are also incorporated in re-insurance policies Modern re-insurance policies against total loss frequently contain a clause binding the re-insurer to pay in the event of a 'compromised" or "arranged" loss Sometimes a "follow the settlements" clause is also found inserted in a re-insurance policy

The clause "to pay as may be paid" precludes the re-insurer from disputing the amount paid by way of compromise provided there was a loss on the original policy [7] Under the clause "compromised" or "arranged", the re-assured cannot recover without proving that he was in fact liable to pay an actual or constructive total loss, or showing that the original assured had put forward a *bona fide* claim for a total loss, with or without an alternative claim for a partial loss [8] Where the "suing and labouring" clause is inserted

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1 *Forsikringsakt National* v *Attorney-General* (1925) A C 639 *Re London County Commercial Re insurance Office* (1922) 2 Ch 67

2 *See* Note 6 *supra* and cases cited therein

3 *Home Insurance of New York* v *Victoria Montreal Fire* (1907) A C 59

4 *Low r Rhine Insurance* v *Sedgwick* (1899) 1 Q B 179 per Rigby L J *see* also *Norwich Union* v *Colonial Mutual Fire* (1922) 2 K B 461

5 *Scottish Metropolitan Assurance* v *Groom*, (1924) 41 T L R 35

6 *Western Assurance of Toronto* v *Poole* (1903) 1 K B 376 *Excess Insurance* v *Mathews* (1925) 31 Com Cas 43, *Traders* v *Bankers General Insurance* (1921) 38 T L R 91

7 *Western Assurance Company of Toronto* v *Poole* (1903) 1 K B 376 doubted in *Gurney* v *Grimmer*, (1932) 38 Com Cas 7 C A by Scrutton L. J ; *see* also *Turman's Fund Insurance Co* v *Western Australian Insurance Co Ltd* (1927) 43 Com Cas 36 ; *Australian Widows Fund Life Assurance Society Ltd* v *National Mutual Life Association, of Australasia, Ltd* (1914) A C 634 (P C)

8 *Street* v *Royal Exchange Assurance*, (1911) 19 Com Cas 339 C A ; *Bergens Dampskibs Assurance etc* v *Sun Insurance Office Ltd*, (1930) 143 L T 435 *Excess Insurance Co, Ltd* v *Mathews* (1925) 31 Com Cas 43

in a re-insurance policy it will be disregarded when it is inconsistent with written clauses in the policy Even where there is a series of insurances, this clause will not entitle the first re-insurer to recover from the second in respect of payments which he has become liable to make to the original insurer by virtue of the "sue and labour" clause in the first re-insurance policy Similar is also the case with "continuation" or the "warehouse to warehouse" clause [1]

11 Re-insurer's liability —No liability under a re-insurance policy arises until the amount due to the assured under the original policy is ascertained Hence liability *plus* ascertainment of it is all that is necessary to found a claim under a re-insurance policy It is not necessary for a claim upon a re-insurance policy that the ascertained liability has been discharged [2] Where a claim under a re-insurance policy is payable in a foreign currency, the date when the original loss was ascertained is the date for fixing the rate of exchange [3]

But to recover from the re insurer the re-assured must prove the loss in the same manner as the original assured should have done against the re-assured and in an action against a re-insurer he can take all such defences as the re-assured could take against the original assured [4] However, in case of a total loss the re-assured need not give notice of abandonment [5]

In case of insolvency of the re insured, the re-insurer is liable to him in full and not for the amount which the original assured could recover from him [6] Similarly, the original assured has no claim against the re insurer even though he paid the re-insured in full on his being insolvent because the original assured is a stranger to the contract of re insurance [7] But where the insurer gives the assured a charge upon the policy of re-insurance the original assured can recover the whole amount payable by the re-insurer on the bankruptcy of the re-insured [8]

12 Double insurance or over-insurance —When an assured effects more than one insurance upon the same risk he is said to effect double insurance In such a case when one policy is insufficient to make good his loss he can fall back upon another, but if one policy covers his whole loss he cannot claim advantage of the other But when two or more persons insure a property declaring their respective interest in the property each of them can claim the benefit of their respective policies upon the same property Lord Mansfield has observed thus "In case of over-insurance, the different sets of policies are considered as making but one insurance, and are good to the extent of the value of the effect put in risk, the assured can recover on the

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1 Halsbury's Laws of England 2nd Ed Vol 22 p 105

2 *Versicherungs und Transport A G Danguva v Henderson* (1934) 39 Com. Cas 154 affirmed in (1934) All E R 626 C A but *see Fireman's Fund v Western Australian Insurance* (1927) 138 L T 108 where it has been observed that there must not only be liability but also payment to support a claim under a contract of re-insurance.

3 *Versicherungs und Transport A G Danguva v Henderson supra see* also *Chartered Trust and Executor Co v London and Scottish Insurance Corporation* (1923) 16 Ll L R 233

4 Halsbury *op cit* p 105, *see* also *China Traders Insurance Co v Royal Exchange Assurance Corporation* (1898) 2 Q B 187 C A where it was held that the re-insurer was entitled to an affidavit of ship's papers though they were not in the custody of the plaintiff

5 S 62 (9) Marine Insurance Act 1906 and see *Uzielli v Boston Marine Insurance* (1884) 15 Q B D 11 C A

6 *Re Law Guarantee Trust* (1914) 2 Ch 617 but see *Napean v Marten* (1895) 11 T L R 256 where it has been said that the re-insurer's liability for the excess may be expressly excluded by the policy

7 *See* S 9 (2) Marine Insurance Act 1906.

8 *General Insurance of Trieste v Miller* (1896) 12 T L R 335

different policies no more than their value, but he may sue the underwriters on any of the policies, and recover from those, he so sues, to the full extent of his loss, suffering it to be covered by the policy on which he elects to sue [1]

The application of the principle to re-insurance may be illustrated thus *A* and *B*, two insurers grant *X* and *Y* policies on the property *Z* the total amount of *X* and *Y* exceeds the value of *Z*, *A* and *B* then re-insure on *Y* policy, in this case the amount of re-insurer's liability will depend upon whether the policy *Y* was (i) in addition to *X* or (ii) in substitution of *X* In case (i) the re insurer will have to pay such proportion of the whole loss as is equal to the proportion which the sum insured by *Y* policy bears to the whole sum insured by *X* and *Y* In case (ii) if the original insurers were liable on *Y* policy, the re-insurer will have to pay up the full amount on the policy of re-insurance [2]

13 **Subrogation**—Subrogation, in insurance law, is the doctrine by which the insurer steps into the shoes of the insured for the enforcement of all rights against strangers or third persons who may primarily be liable for the loss incurred when the former indemnifies the latter in respect of the latter's loss To put the doctrine shortly, the insurer is subrogated to the insured's right of action The insured will under no circumstances, unless there is a contract to the contrary, be allowed to defeat this right of action of the insurer Lord Blackburn observed "The general rule of law is that where there is a contract of indemnity and a loss happens, anything which reduces or diminishes the amount which the indemnifier is bound to pay, and if the indemnifier has already paid it then, if anything which diminishes the loss comes into the hands of the person to whom he has paid it, it becomes an equity that the person who has already paid the full indemnity is entitled to be recouped by having that amount back [3] Brett, L J also observed thus 'as between the underwriter and the assured, the underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract fulfilled or unfulfilled "[4]

Re insurers are also entitled to be subrogated to all the rights of the original insurers, including the rights of the assured to which the original insurers are subrogated [5]

14 **Re-insurance with Indian re-insurers, Central Government's power**—Sub-section (1) enjoins on every insurer to re-insure with Indian re-insurers certain percentage of the sum assured on each policy effected by him

Sub-section (2) empowers the Central Government to specify (i) the percentage of the assured on each policy to be re-insured including different percentage for different classes of insurance, and (ii) the proportions in which the said percentage to be allocated among Indian re-insurers In specifying such percentage proviso to sub-section 2 (*a*) provides that it must not exceed

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1 *Newby* v *Reid* (1763) 1 Wm. Bl 416 *see* also S 32 (2) (*a*) Marine Insurance Act 1906 *see* al o *Bruce* v *Jones* (1863) 1 H and C 769 *North British* v *London, Liverpool and Globe* (1877) 5 Ch D 569

2 *Union Marine Insurance Co* v *Martin* (1866) 35 L J C P 181

3 *Burnand* v *Rodocanachi* (1882) 7 App Cas 323 *see* also *Hardeo Purushottam* v *Henry Gamble*, 12 Bom, H C 23

4 *Castelain* v *Preston* (1883) 1 Q B D 388 *see* also *Phoenix Assurance Co* v *Spooner*, (1905) 2 K B 753 *Boag* v *Standard Marine* (1937) 2 K B 113, *Austin* v *Zurich* (1944) 2 All E. R. 243

5 *Assimrazioni Generali* v *Empress Assurance*, (1907) 2 K B 814 *Halch Mansfield* v *Weingott* (1906) 22 T L. R. 366 *The Ocean Wave* (1873) 5 Biss 378

30 per cent of the sum assured on each policy Such specification of per centage has to be made by notification in the official Gazette In this regard, the Central Government has certain duties, namely,—

(*i*) it must not issue any notification in the official Gazette notifying the specification of percentage or proportion of its allocation or terms and conditions of any business of re-insurance, unless before such notification it consults the Advisory Committee constituted under the succeeding section 101-B,

(*ii*) it must lay before both the Houses of Parliament every notification as soon after it is made

The Central Government has also been empowered by sub section (4) to specify the terms and conditions in respect of any business of re insurance required to be transacted under this section and those terms and conditions shall be binding both on Indian re-insurers and other insurers But such terms and conditions have also to be notified in the official Gazette, unless this is done they will have no binding effect

15 Re-insurance with respect to fire insurance business, sub section (3) —In respect of fire insuring business which an insurer carries on in India he has been given an alternative method of re insurance by sub section (3), that is to say, instead of re insurance the specified percentage of the sum assured on each policy in respect of his business, he has the option of re insuring such amount out of the first surplus in respect of his fire insurance business as he thinks fit in a way that the aggregate amount of the premiums payable by him on such re insurance in any year must not be less than the specified percentage of the premium in respect of the fire insurance business during that year In calculating the said percentage of the premium income premiums on re insurance ceded or accepted should not be taken into account and the year should be deemed to mean the period from 1st April, 1951 to 31st December of that year

16 Re insurance in excess of specified percentage permissibility of sub section (7) —Sub section (7) permits an insurer to re insure with any Indian re-insurer or other insurer the entire sum assured on any policy or any portion thereof in excess of the specified percentage as stated above

17 "Policy' and 'Indian re insurer', definition of, sub section (8) —"Policy" as defined in sub section (8) means a policy issued or renewed in respect of general insurance business, *i e*, fire, marine or miscellaneous insurance business whether carried on singly or in combination with one or more of them, on or after the 1st day of April, 1961 in respect of that business transacted in India but does not include a re insurance policy

'Indian re insurer' as defined in this sub-clause means an insurer specified in sub-clause (*b*) of clause (9) of section 9 who carries on exclusively re-insurance business and he must be approved as such by the Central Government [1]

Advisory Committee

101-B (1) The Central Government shall, for the purposes of section 101-A, constitute an Advisory Committee consisting of not more than five persons having special knowledge and experience of the business of insurance

1 *See* also Note 5 under S 2 *supra*

(2) The term of office of, and the allowances payable to, members of the Advisory Committee, the procedure to be followed by, and the quorum necessary for the transaction of business of, the committee and the manner of filling casual vacancies therein shall be such as may be prescribed

Note

This section lays down that the Advisory Committee should, consist of not more than five persons who must have special knowledge and experience of insurance business and the details of such committee, namely, term of office, allowances, procedure of meeting, etc should be as would be prescribed under the rule [1] In terms of the Act, two Indian insurers, viz India Re-insurance Corporation Ltd and Indian Guarantee and General Insurance Ltd have been approved to carry on only re-insurance business A re insurance advisory committee, with Shri S K Vaiyapuri as chairman, has also been constituted [2]

PART V
MISCELLANEOUS

Penalty for default in complying with, or act in contravention of this Act

102 (1) Except as otherwise provided in this Act, any insurer, principal agent, chief agent, or special agent, who makes default in complying with, or acts in contravention of, any requirement of this Act, or of any rule or order made thereunder and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing default or contravention with an additional fine which may extend to five hundred rupees for every day during which the default or contravention continues

(2) Any provident society as defined in Part III which makes default in complying with or acts in contravention of any requirement of this Act or of any rule or order made thereunder and any director, managing agent, manager, secretary or other officer of the society who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to five hundred rupees or in the case of a continuing default or contravention with fine which may extend to two hundred and fifty rupees for every day during which the default or contravention continues

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Persons to be penalized*
5 *Extent of punishment*
6 *Continuing default or contravention*

1 *See* Rules 34 to 38 of the Insurance Rules 1939.

2 Indian Insurance Year Book

1 Legislative changes—Sub-section (1) was substituted by Act XLVII of 1950

The words "Any provident society acts in contravention of" in sub-section (2) were substituted for the words "Any provident society which makes default in complying with any of the requirements of Part III" by Act XIII of 1941, the words "any requirement of this Act thereunder" were substituted by Act XLVII of 1950, and the words "or contravention" in same sub-section were inserted by Act XIII of 1941

2 Object and scope—The object of the section is to penalise insurers of every description including provident societies for making default in complying with the requirements of the Act or contravening any provisions of the Act The provisions have salutary effect in bringing the insurers or the persons responsible for managing the affairs of the insurer or the provident societies to become cautious in their actions with respect to the obligations imposed under the Act, or under any rule or order made under the Act

This section penalizes not only the first act or default through the imposition of specific fine but also every continuing act or default by imposing additional fine for each day of default or contravention as it continues

The English Insurance Companies Act, 1958 makes similar provisions where "any insurance company which makes default in complying with any requirements of this Act shall be liable to penalty not exceeding one hundred pounds or in case of a continuing default, to a penalty not exceeding fifty pounds for every day during which the default continues, and every director, manager, secretary or other officer or agent of the company who is knowingly a party to the default shall be liable to a like penalty"[1] The said Act further provides that when such default continues for a period of three months after notice of default by the Board of Trade the default shall be a ground on which the Court may order the winding up of the company in accordance with the Companies Act, 1948[2] Penalties for non compliance with Companies Act, 1956, have also been provided in that Act[3]

3 Applicability—The provisions of this section apply to every insurer, principal agent, chief agent, or special agent and every provident society as defined in Part III of this Act and in the application of this section to them certain exception has been made as indicated in the phrase 'except as otherwise provided in this Act" which means that where specific provisions have been made for non-compliance or contravention of the specific provisions of this Act and such specific provisions have been made in the succeeding sections such as sections 103 to 105 of the Act This section has also been applied to the Life Insurance Corporation of India

4 Persons to be penalised—Persons to be penalised under this section are—

(i) every insurer, whether he is an individual or it is a company or a firm, in case it being (*a*) a company any director, managing agent or its other officer and (*b*) a firm, any partner of the firm, but he must be knowingly a party to the default or contravention,

(ii) principal agent

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1 S 26 (1) of the said Act
2 S 26 (2) of the said Act
3 *See* sections 68 105, 142, 162 168 207, 209 218 233 233A 272 279, 371 and 374 of the said Act

(iii) chief agent, or

(iv) special agent, and

(v) any provident society defined in Part III of the Act including (*a*) any director, (*b*) managing agent, (*c*) manager (*d*) secretary and (*e*) other officer of the society who must also be knowingly a party to the default or contravention—when a person represents different categories he can be penalised in each capacity [1]

5 **Extent of punishment** —The extent of punishment provided under this section is the imposition of fine which in the case of (*a*) any insurer principal agent, chief agent or special agent may extend to Rs 1,000, and in the case of (*b*) any provident society defined in Part III of the Act may extend to Rs 500

6 **Continuing default or contravention** —Non-compliance with the provisions of this Act or their contravention has been made a continuing wrong and such wrong will continue so long as it is not remedied and hence any insurer, principal agent, chief agent or special agent and any provident society defined in Part III continuing such after it has first occurred become liable to additional penalty as provided in this section The penalty provided is (*a*) in case of any insurer, principal agent, chief agent or special agent, a fine of Rs 500 for every day during which the default or contravention continues, and (*b*) in the case of the provident society, a fine of Rs 250 likewise

The expresion "continuing offence" means that it gives rise to a fresh offence *de die in diem*, so long as the omission, which has been made penal by the statute, is not rectified [2]

Penalty for transacting insurance business in contravention of sections 3 7 and 98

103 (1) Any insurer or any person acting on behalf of an insurer, who carries on any class of insurance business in contravention of any of the provisions of section 3, section 7 or section 98, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to two thousand rupees

(2) Any person knowingly taking out a policy of insurance with any insurer or person guilty of offence under sub section (1) shall be punishable with fine which may extend to five hundred rupees

Provided that nothing in sub-section (1) or sub-section (2) shall apply to the business of re-insurance between the head office of an insurer in India and the head office of an insurer not having an office in India

(3) Any provident society or any person acting on behalf of a provident society who carries on any class of insurance business

1 See *In re K C Pandalai representing South Indian General Assurance Co Ltd* 1940 Mad 760

2 *State v Umashankar Laxminarayan Jasnol*, (1962) 2 Cr L J 485 1962 Mad Pra 311 *State v Kunja Bihari* 1954 (F B)

in contravention of any of the provisions of section 70, section 73 or section 83, or does any one or more of the acts constituting the business of insurance in relation to any insurance business carried on in contravention of any of the said sections shall be punishable with fine which may extend to one thousand rupees

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Person to be penalised*
5 *Extent of punishment*
6 *Re insurance exempted*

1 Legislative changes —The words "carries on" in sub-section (1) were substituted for the word "transacts" by Act XIII of 1941, the words and figures "section 6" and "section 97" were omitted by the said Act and the words "in relation to any insurance business said sections" were substituted for the words "in relation to any such class of insurance business" by Act XI of 1939 The words and figures "sub-section (1) or sub-section (2)" in Proviso to sub-section (2) were subs ituted for the words "this section" by Act XIII of 1941 The word "India" in the said proviso was substituted by Act LXII of 1956 Sub section (3) was added by Act XIII of 1941

2 Object and scope —The object of the section is to provide heavier penalty for contravention of provisions of section 3, 7 or 98 in case of any insurer or any person acting on behalf of an insurer and for contravention of provisions of sections 70, 73 or 83 in case of any provident society or any person acting on its behalf

The preceding section 102 provides penalties for contravention of any provisions of the Act and contravention of sections 3, 7, 98, 70, 73 and 83 of the Act also comes within the ambit of that section and as heavier penalty than that provided in section 102 having been provided in this section the contraventions of those sections have to be dealt with herein under this section and the contraventions being otherwise provided in this section than those provided in section 102 the provisions of this section to those contraven tions are attracted and provisions of section 102 are excluded because of the phrase "except as otherwise provided in this Act" occurring in the said section

Apart from penalising the insurer or any person acting on his behalf the section also penalises any person who takes out a policy of insurance with such an insurer with the knowledge that the insurer is guilty of the offence of contravening any of the provisions of section 3, 7 or 98 But no such provision is made in respect of any person taking out a policy with a provident society even if he knows that the society is guilty of contravention of any of the sections, such as sections 70, 73 and 83 of the Act Again a re insurance by a non resident insurer is exempted from such penalty

3 Applicability —The provisions of this section apply to all kinds of insurers and to all persons who act on behalf of such insurers and in respect of any class of insurance business except the business of re-insurance when granted by non-resident foreign insurer

These provisions equally apply to all provident societies coming under Part III of the Act and all persons acting on behalf of such societies and in respect of any class of insurance business.

The provisions herein have also been made applicable to all policy-holders who knowingly take out policies of insurance with such insurers who are guilty of the offence of contravening any of the sections, such as 3, 7 or 98 of the Act

The section also applies to Mutual Insurance Companies and Co-operative Life Insurance Societies, and has been made applicable to the Life Insurance Corporation of India

4 **Persons to be penalised** —Persons to be penalised under this section are—

(i) any insurer, whether Indian or foreign, whether incorporated or not, whether a firm or an individual and any person acting on behalf of such an insurer of the above description He can only be penalised on the grounds that he (*a*) carries on any class of insurance business contravening the provisions as regards registration and as regards deposits contained respectively in sections 3 and 7 of the Act, or (*b*) does any one or more of the acts constituting the business of insurance in relation to that insurance business where contraventions of those provisions have been made ,

(ii) any mutual insurance company or any co-operative life insurance society and any person acting on behalf of such a company or the society, as the case may be, who (*a*) carries on the business of insurance contravening the provisions as regards deposits contained in section 98 of the Act, or (*b*) does any one or more of the acts constituting the business of insurance in relation to that insurance business where contravention of the said provisions have been made ,

(iii) any policy holder who knowingly takes out a policy of insurance with any insurer, mutual insurance company or co-operative life insurance society or with any person acting on behalf of any of them guilty of contravening the provisions of section 3 or 7 or section 98, as the case may be ,

(iv) any provident society or any person acting on its behalf who (*a*) carries on any class of insurance business contravening the provisions as regards registration, or deposits or actuarial examination of any schemes as contained respectively in sections 70, 73 and 83 of the Act, or (*b*) does any one or more of the acts constituting the said business in relation to insurance business carried on contravening the said provisions of the Act

5 **Extent of punishment** —The extent of punishment provided under this Act varies from insurer to policy-holder and from insurer to provident society The punishment provided by this section is the imposition of fine, the maximum extent of which as fixed in this section is—

(i) in case of any insurer or any person acting on his behalf, Rs 2,000 ,

(ii) in case of any mutual insurance company or co-operative life insurance society or any person acting on behalf of either, Rs 2,000 ,

(iii) in case of a policy-holder knowingly taking out a policy, Rs 500 , and

(*iv*) in case of a provident society or any person acting on its behalf, Rs 1,000

6 **Re insurance exempted** —As has already been noticed in Part IV-A, *supra*, that re insurance is also a class of insurance business and hence any contravention of the provisions of those sections mentioned in the section may well bring such re-insurer within the mischief of this section But proviso to sub-section (*2*) of this section makes the provisions of sub-sections (1) and (2) therein inapplicable to the business of re-insurance where such business is between the head office of an insurer in India and the head office of an insurer who has no such office in India, that is to say, the business of re-insurance contemplated in the proviso is between two insurance offices, one of whose head office is in India and the head office of the other is outside India, and such a business of re-insurance is exempted from the mischief of this section But where the business of re insurance is between the two insurers whose respective head office is in India and where the contraventions contemplated by this section are committed by any one of them, both would become liable to penalties provided herein, the insurer contravening the provisions being liable to a fine not exceeding Rs 2,000 and the insurer taking out a policy with him knowing of the said contravention being liable to a fine not exceeding Rs 500

Penalty for false statement in document

104 Whoever, in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both.

Notes

The penal provisions of this section are more stringent than the provi sions made in the preceding sections 102 nd 103 The penalties provided herein are (*a*) inflicting of punishment of imprisonment not exceeding three years, or (*b*) imposition of fine not exceeding Rs 1 000, or (*c*) inflicting both the punishments of imprisonment and fine

The offence for which the said punishment has been provided is wilfully making a statement false in any material particular knowing it to be false with respect to any return, report certificate, balance sheet or other document required by or for the purposes of any of the provisions of the Act

The person to be penalised under this section may be any person who makes the statement false in material particular knowing it to be false and is responsible for the return, certificate balance-sheet or other document Thus, apart from the directors the managing agents, manager, secretary, any partner or proprietor, an auditor or an actuary or any principal officer of the insurer becomes liable to the penalties under this section

Section 27 of the English Insurance Companies Act, 1958, also provides that if any account balance-sheet abstract statement or other document required by any provision of that Act other than section 14 thereof is false in any particular to the knowledge of any person who signs it, that person shall be guilty of a misdemeanour and shall be liable on summary conviction to a fine not exceeding fifty pounds

Regarding prosecution under this section by the State Government on obtaining the requisite sanction from the Advocate-General, *see* section 107 *post* under Note 4 and the cases cited therein

This section has been made applicable to the Life Insurance Corporation of India

Wrongfully obtaining or withholding property

105 (1) Any director, managing agent, manager or other officer or employee of an insurer who wrongfully obtains possession of any property of the insurer or having any such property in his possession wrongfully withholds it or wilfully applies it to purposes other than those expressed or authorised by this Act shall on the complaint of the Controller made after giving the insurer not less than fifteen days' notice of his intention, or on the complaint of the insurer or any member or any policy-holder thereof, be punishable with fine which may extend to one thousand rupees and may be ordered by the Court trying the offence to deliver up or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully with held or wilfully misapplied and in default to suffer imprisonment for a period not exceeding two years

(2) This section shall apply in respect of a provident society as defined in Part III as it applied in respect of an insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Persons competent to complain*
5 *Persons to be complained against*
6 *Extent of punishment*

1 Legislative changes —This section was substituted by Act LIV of 1955 with effect on and from 1st November, 1955

2 Object and scope —The object of the section is twofold It provides penalty for wrongfully obtaining or withholding property of the insurer by any person standing in the position of trust to that insurer and also a speedy recovery of that property on pain of imprisonment The section enumerates the persons against whom prosecution for the offence can be brought and also the persons who are competent to institute such complaint It lays down the punishment that can be inflicted upon the offender and empowers the Court to order delivery of the property so obtained detained or wilfully misapplied and in default to pass sentence of imprisonment

By sub-section (2) the provisions of this section have been more applicable to provident society as defined in Part III in the same way as they are applicable to an insurer

3 Applicability —The provisions of this section apply to any director, managing agent, manager or other officer or employee of any insurer or a provident society as defined in Part III of the Act and will apply only and only when he (*a*) wrongfully obtains possession of any property, or (*b*) having any such property in his possession (*i*) wilfully withholds it, or (*ii*) wilfully applies it to purposes other than those expressed or authorised by this Act The section has been made applicable to Life Insurance Corporation of India.

4 **Persons competent to complain** —The persons who can make a complaint for the offence under this section are (*i*) the Controller who must, before making a complaint, give the insurer at least 15 days' notice of his intention to make a complaint, (*ii*) the insurer himself or itself, (*iii*) any member, when the insurer is a company or a society, or (*iv*) any policy holder of such insurer Except the persons aforementioned no other person is competent to make a complaint under this section

5 **Persons to be complained against** —Person or persons against whom a complaint under this section can be made are (*i*) any director, (*ii*) managing agent, (*iii*) manager, (*iv*) other officer, or (*v*) any employee of the insurer or of the provident society, when he wrongfully obtains or withholds or misapplies the property of the insurer or the society

6 **Extent of punishment** —Punishment provided for the offence under this section is a fine not exceeding Rs 1,000 and where the Court orders delivery or return of the property within a time fixed by it and when there is a default in complying with the said order within the time so specified a further punishment is provided which is by way of imprisonment not exceeding two years, that is imprisonment by way of punishment cannot be inflicted at the first instance and it can only be resorted to when the offender does not deliver or return the property so ordered by the Court within the time fixed by it

Power of Court to order restoration of property of insurer or compensation in certain cases

106 (1) If, on the application of the Controller or an Administrator appointed under section 52A or an insurer or any policy-holder or any member of an insurance company or the liquidator of an insurance company (in the event of the insurance company being in liquidation), the Court is satisfied,—

(*a*) that any insurer (including in any case where the insurer is an insurance company any person who has taken part in the promotion or formation of the insurance company or any past or present director, managing agent, manager, secretary or liquidator or any officer, employee, or agent of the insurer,—

(*i*) has misapplied or retained or become liable or become accountable for any money or property of the insurer, or

(*ii*) has been guilty of any misfeasance or breach of trust in relation to the insurer, or

(*b*) that any person, whether he is or has been in any way connected with the affairs of the insurer or not, is in wrongful possession of any money or property of the insurer or having any such money or property in his possession wrongfully withholds it or has converted it to any use other than that of the insurer, or

(*c*) that by reason of any contravention of the provisions of this Act, the amount of the life insurance fund has been diminished,

The Court may examine any such insurer, director, managing agent, manager, secretary or liquidator or any such officer, employee or agent of the insurer or such other person, as the case may be, and may compel him to contribute such sums to the assets of the insurer by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks fit, or to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable or to restore any money or property of the insurer or any part thereof, as the case may be, and where the amount of the life insurance fund has been diminished by reason of any contravention of the provisions of this Act, the Court shall have power to assess the sum by which the amount of the fund has been diminished and to order the person guilty of such contravention to contribute to the fund the whole or any part of that sum by way of compensation; and in any of the aforesaid case the Court shall have power to order interest to be paid at such rate and from such time as the Court may deem fit

(2) Without prejudice to the provisions contained in sub-section (1) or sub-section (3), where it is proved that any money or property of an insurer has disappeared or has been lost, the Court shall presume that every person in charge of, or having a disposing power over, such money or property at the relevant time (whether a director, manager, principal officer or any other officer) has become accountable for such money or property within the meaning of sub-clause (*i*) of clause (*a*) of sub-section (1), and the provisions of that sub-section shall apply accordingly, unless such person proves that the money or property has been utilised or disposed of in the ordinary course of the business of the insurer and for the purpose of that business or that he took all reasonable steps to prevent the disappearance or loss of such money or property or otherwise satisfactorily accounts for such disappearance or loss

(3) Where the insurer is an insurance company and any of the acts referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) has been committed by any person, every person who was at the relevant time a director, managing agent, manager, liquidator, secretary or other officer of the insurance company shall, for the purposes of that sub section, be deemed to be liable for that act, unless he proves that the act was committed without his consent or connivance and was not facilitated by any neglect or omission on his part

(4) Where at any stage of the proceedings against any person under this section (hereinafter referred to as the delinquent), the Court is satisfied by affidavit or otherwise—

(*a*) that a *prima facie* case has been made out against the the delinquent , and

(*b*) that it is just and proper so to do in the interests of the policy-holders of an insurer or of the members of the insurance company,

the Court may direct the attachment of—

(*i*) any property of the insurer in the possession of the delinquent ,

(*ii*) any property of the delinquent which belongs to him or is deemed to belong to him within the meaning of sub-section (5) ,

(*iii*) any property transferred by the delinquent within two years before the commencement of proceedings under sub-section (1) or during the pendency of such proceedings, if the Court is satisfied by affidavit or otherwise that the transfer was otherwise than in good faith and for considera tion

(5) For the purposes of sub-section (4), the following classes of property shall be deemed to belong to a delinquent,—

(*a*) any property standing in the name of any person which by reason of the person being connected with the delinquent, whether by way of relationship or otherwise or on account of any other relevant circumstances appears to belong to the delinquent ,

(*b*) the property of a private company in respect of the affiairs of which the delinquent by himself or through his nominees, relatives, partners or persons interested in any shares of the company is able to exercise or is entitled to acquire control, whether direct or indirect

Explanation —For the purposes of this section a person shall be deemed to be a nominee of a delinquent, if, whether directly or indirectly, he possesses on behalf of the delinquent, or may be required to exercise on the direction or on behalf of the delinquent, any right or power which is of such a nature as to enable the delinquent to exercise or to entitle the delinquent to acquire control over the company's affairs

(6) Any claim to any property attached under this section or any objection to such attachment shall be made by an application to the Court, and it shall be for the claimant or objector to adduce evidence to show that the property is not liable to attachment under this section, and the Court shall proceed to investigate the claim or objection in a summary manner

(7) When disposing of an application under sub-section (1), the Court shall, after giving all persons who appear to it to be interested in any property attached under this section an opportunity of being heard, make such order as it thinks fit respecting the disposal of any such property for the purpose of effectually enforcing liability under this section, and all such persons shall be deemed to be parties to the proceedings under this section

(8) In any proceedings under this section the Court shall have full power and exclusive jurisdiction to decide all questions of any nature whatsoever arising thereunder and, in particular, with respect to any property attached under this section, and no other Court shall have jurisdiction to decide any such question in any suit or other legal proceeding

(9) In making any order with respect to the disposal of the property of any private company referred in clause (*b*) of sub-section (5), the Court shall have due regard to the interests of all persons interested in such property other than the delinquent and persons referred to in that clause

(10) This section shall apply notwithstanding that the act is one for which the person concerned may be criminally liable

(11) In proceedings under this section the Court shall have all the powers which a Court has under section 237 of the Indian Companies Act, 1913

(12) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer

(13) On and from the commencement of the Insurance (Second Amendment) Act, 1955, the Court entitled to exercise jurisdiction under this section shall be the High Court within whose jurisdiction the registered office of the insurer is situate (hereinafter referred to as the High Court, and any proceedings under this section pending at such commencement in any Court other than the High Court shall, on such commencement, stand transferred to the High Court

(14) The High Court may make rules providing for—

(a) the manner in which enquiries and proceedings may be held under this section,

(*b*) any other matter for which provision has to be made for enabling the High Court to effectively its jurisdiction under this section

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Persons competent to apply and against whom application can be made*
5 *Grounds of application*
(A) *Misfeasance meaning of*
(B) *"Breach of trust"*
(C) *"Officer", meaning of*
6 *Conditions for application of the section*
7 *Foundation of Court's jurisdiction and its nature*
8 *Powers of the Court*
(A) *Discretionary powers Gener*
(B) *Power to attach any properly*
(C) *Power to prosecute delinqu officers and persons*
(D) *Mandatory powers*
9 *Liability under this section : sub-s tion (3)*
10 *Burden of proof, sub-section (2)*
11 *Classes of property deemed belong to delinquent*
(A) *"Nominee" of a delinquent meaning of*
(B) *"Relative", meaning of*

1 Legislative changes —This section was substituted by Act LIV 1955 with effect from 1st November, 1955

2 Object and scope —The object of the section is to confer plena powers on the High Court over any insurer or any of its officer, employee agent or on any person whether he is or has been in any way concerned wi the affairs of the insurer or not or when the insurer is a company, on its dire tor, past or present, managing agent, manager, secretary or liquidator promoter in the matter of ordering restoration of property of insurer compensation when he or any of them has misapplied or retained any proper or diminished the life insurance fund or is guilty of misfeasance or breac of trust in relation to the insurer

The scope of the previous section prior to the present one was restricte only to cases where diminution of the life insurance fund has occurred due some action on a contravention of the Act but the scope of this section has be enlarged to include within its ambit all possible cases of misfeasance

This section empowers the High Court to attach (*a*) any property of th insurer in the possession of the delinquent (*b*) any property of the delinquen which belongs to him or which although ostensibly standing in the name any other person (including a private company which is controlled by th delinquent) really belongs to him, and (*c*) any property transferred by th delinquent within two years before the commencement of the proceedin against him or during the pendency of such proceedings

The section contains highly drastic provisions with a view to prevet defalcations of the funds and properties of insurance companies It enabl every person having an interest in the company such as, any policy-holde member or liquidator, in addition to the Controller or the Administrator, move the court by way of application to take action under this section

Sub-section (2) provides a rule of evidence by placing the burde of proof upon the delinquent to prove that the money or property has bee utilised or disposed of in the ordinary course of business and that he took a reasonable steps to prevent the disappearance or loss of such mone or property

Sub-section (4) empowers the court to order attachment before judg ment of the properties of the insurer and of the delinquent and of properti transferred by him within two years before the commencement of th proceedings against him

The section has conferred powers on the court, amongst others, as follows

(i) to investigate any claim or objection in a summary manner to the attached property or properties put forward by any claimant or objector,

(ii) to give all persons interested in the attached property an opportunity of being heard before disposing of the application,

(iii) to decide all questions of any nature whatever arising with respect to any attached property or arising out of the application made under this section, and

(iv) to make such order respecting the disposal of the attached property for the purpose of effectually enforcing any liability under the section The order which the court makes under this section has been made final and no other court shall have any jurisdiction to decide any question relating thereto in any suit or legal proceeding The court has also been invested with all the powers which a court under section 237 of the Indian Companies Act, 1913 (corresponding to section 545, Companies Act), possesses, that is, it can direct the prosecution of the delinquent when it appears to it that he has been guilty of any offence in relation to the insurer

On and from the 1st November, 1955, *i e*, the day of the commencement of the Insurance (Second Amendment) Act, 1955, the District Court's jurisdiction to initiate any proceeding under this section had been abolished and such jurisdiction has been vested in the High Court which alone can exercise jurisdiction over proceedings under this section and all proceedings pending on the said date in any other court stand transferred to the High Court having jurisdiction over the insurer in its territory where the registered office of the insurer is situate

The High Court has further been empowered to make rules providing for matters to enable it to effectively exercise its jurisdiction under this section The provisions of this section may be compared with the provisions contained in sections 477, 478, 519 531, 531A, 533, 538, 540, 541, 542, 543, 544 and 545 of the Companies Act, 1956

3 **Applicability** —The provisions of this section apply to all insurers including where the insurer is a company incorporated under the Companies Act and also to the provident society as defined in Part III of the Act

4 **Persons competent to apply and against whom application can be made** —Persons competent to apply under this section are (i) the Controller, (ii) the Administrator appointed under section 52A of the Act, (iii) the insurer, (iv) any policy holder, or (v) any member of an insurance company, or (vi) the liquidator of an insurance company in the event of that company being in liquidation

Persons against whom an application under this section can be made are—

(i) any insurer or (ii) any of its (*a*) officer, (*b*) employee, or (*c*) agent,

(ii) where the insurer is an insurance company,—

(*a*) any person who has taken part in the promotion or of that company, *i e* the promoter,

(*b*) any director, past or present,

(*c*) managing agent,

(*d*) manager,

(*e*) secretary, or

(*f*) liquidator when the company is in liquidation, or

(*iii*) any person, whether connected in any way with the affairs of the insurer or not wrongfully retaining or possessing any money or property of the insurer

The section has been made applicable to the Life Insurance Corporation of India

5 **Grounds of application** —Where an application under this section is directed against an insurer or any of its officer, employee or agent or against any past or present director, or promoter or managing agent, manager, secretary or liquidator, the grounds upon which such application must rest are—

(*i*) that he has misapplied or retained or become liable or accountable for any property or money of the insurer, or

(*ii*) that he has been guilty of any misfeasance or breach of trust in relation to the insurer, or

(*iii*) that by reason of any contravention of the provisions of this Act the amount of the life insurance fund has been diminished

Where such application is directed against a third party it must rest on the grounds that—

(*i*) he is in wrongful possession of any money or property of the insurer, or having any such money or property in his possession,

(*ii*) he wrongfully withholds it, or

(*iii*) he has converted it to any use other than that of the insurer

(*A*) "*Misfeasance*", *meaning of* —The word 'misfeasance' "covers every misconduct by an officer of the company as such for which such officer might have been sued apart from the section "[1] Thus, allotment of shares without receiving allotment money, or distribution of dividends out of capital and other funds not being profits, or a wilful contravention of the provisions of the Act or omission by directors to come to any conclusion whatsoever on an important piece of business duly proposed for the decision of the Board or a director being a party to a calculated or deliberate fraud, come within the meaning of 'misfeasance "[2] A misfeasance proceeding being in the nature of a suit and not being criminal or quasi criminal, can be compromised or settled in accordance with the provisions of Rule 3, Order XXXIII of C P Code [3] It dies with the death of the delinquent and the liability cannot be enforced against his legal representatives [4] In winding up a misfeasance summons abates on the dissolution of the company [5]

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1 *In re Kingston Cotton Mill Co* (1896) 1 Ch 331 *per* Vaughan Williams J *In the matter of Indo-Burma Industries* 1956 Cal 648

2 See *Karachi Bank Ltd* v *Shewaram* 143 I C 713 : 1933 Sind 103 *In the matter of Union Bank Allahabad* 47 All 669 1925 All 519 ; *In re City Equitable Fire Insurance Co* (1925) 1 Ch 407 ; *Indian States Bank Ltd* v *Kunwar Sardar Singh*, 154 I C 33 1934 All 855

3 *Vadilal* v *Thakoredal* I L R (1954) Bom 79

4 *In re Peerdan Juharmall Bank* (1958) 2 M L J 167 : 1958 Com Ca es 546

5 *In re Lewis and Smart Ltd* 24 Com Cases 268 For other instances of misfeasance see *Re National Funds Assurance Co* (1872) 10 Ch D 118 *Re Cape Breton Co* (1885) 29 Ch D 795 *Coats* v *Crossland* (1904) 20 T L R 800 *Maxham* v *Grant* (1900) 1 Q B 88

(B) *"Breach of trust"*—The [illegible] of trust contemplated is a "breach of trust" in relation to [illegible] the insurance company and not in relation to third persons and to make an order against persons who [illegible] it must be shown that [illegible] and thereby the insurers or the company incurred loss[2]

(C) *"Officer"*, meaning of—The word "officer" has been defined in section 2 (30) of the Companies Act, 1956 to include any director, managing agent (including partners where it is a firm and a director or manager where a company), secretary and treasurer, manager, or auditor and save in sections 477, 478, 539, 545, 548, 551, 552 and 553 does not include an auditor.

It has been said that the word "officer" is a term of wide connotation and may also include [illegible] foreign managers, etc.[3] The term "officer" includes a person with whom the term of an appointment is made and called an officer, who is appointed by the company and whose function is to act on behalf of the company, to check the directors and whose appointment is made not in a special meeting or for a special limited purpose but under the regulation governing the constitution of the company.[4]

6 Conditions for application of section—For the application of the section, two conditions must be fulfilled. Firstly, the person against whom it is sought to be applied must fall within the [illegible] of persons specified and secondly, he must have [illegible] misfeasance or become liable or accountable for any money or property of the company or become guilty of any misfeasance or breach of trust in relation to the company or is responsible for diminishing the amount of the assets of the company.[5]

7 Foundation of the Court's jurisdiction and its nature—The foundation of the Court's [illegible] under this section lies in the application of any of the persons mentioned therein [illegible] stating any of the grounds mentioned therein, to which it has to be satisfied before it can grant the relief sought to be [illegible] to the person or persons against whom the relief is sought. Unless the conditions as to the person or persons against whom the relief is sought are satisfied, the Court will have no jurisdiction to grant relief under this section.[6]

In *Isle Well Insurance Co. Ltd.*[7], it has been observed as follows: "It is an [illegible] which enables the Court to exercise a power of an inquisitorial kind which can be third person without [illegible] examined before the Court which may [illegible] to grant to be obvious [illegible] to third persons and [illegible] when he can as not unnecessary [illegible] to be used with the [illegible] and (3) that wanted, or [illegible] machinery of justice be excused and certain [illegible] when it is not clear [illegible] particular [illegible] opinion about [illegible] view that it be

1. See *Re* [illegible] who is only called [illegible] work for a [illegible] Ltd.
2. *Re* [illegible]
3. *Re* [illegible] 4. *Re* [illegible]
5. *Re* [illegible]
6. *Re* [illegible]

or hardship inflicted upon the third person who is called upon to appear There cannot be an order against the directors *en masse* for all acts of misfeasance without specific finding against each individual as regards his responsibility for the particular acts of misfeasance [1] But these provisions are irrespective of any criminal liability of the person concerned [2] The section does not contravene Article 20 (3) of the Constitution,[3] questions cannot be refused to be answered on the ground that the answers may incriminate the person examined if they are necessary for the case [4]

8 **Powers of the Court** —The Court has been invested with numerous powers under this section some of which are discretionary while some are mandatory, but the powers must be exercised with this end in view that it can effectually enforce any liability under this section

(*A*) *Discretionary powers General* —The Court has been given discretionary powers—

(*i*) to examine any person or persons against whom an application has been made by the person or persons mentioned in the section ;

(*ii*) to compel him to contribute such sums to the assets of the insurer by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust ,

(*iii*) to compel him to pay such sum as may be found due from him in respect of any money or property of the insurer for which he is liable or accountable , or

(*iv*) to compel him to restore any money or property of the insurer or any part thereof

(*B*) *Power to attach any property* —The Court has also been conferred with discretionary power to direct attachment of (*i*) any property of the insurer in possession of the delinquent , (*ii*) any property of the delinquent belonging or deemed to belong to him, and (*iii*) any property transferred by him within two years before the commencement of the proceedings under this section or during the pendency of such proceedings

But such order of attachment can be made when the Court must be satisfied upon affidavit or otherwise that (*a*) a *prima facie* case has been made out against the delinquent and if it is just and proper so to do in the interest of the policy holders of an insurer or of the members of the insurance company

(*C*) *Power to prosecute delinquent officers and persons* —Under sub-section (*ii*) of this section, the Court has been given all the powers which a Court has under section 237 of the Indian Companies Act, 1913, corresponding to section 545 of the Companies Act, 1956 Hence where it appears to the Court in the course of the proceedings under this section that any past or present officer has been guilty of any offence in relation to the insurer, it may either on the application of any person interested in the proceeding or of its own motion to direct the liquidator (when insurance company is in liquidation) either himself to prosecute the offender or to refer the matter to the Controller or the Registrar [5]

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1 *In re Central Calcutta Bank Ltd* 63 C W N 407 : 1959 Cal 625 *Official Liquidator v Krishna Kamath* 1959 Com Cases 171

2 See *Indo-Burma Industries Ltd* , 1956 Cal 648, *supra*

3 *In re Central Calcutta Bank Ltd* , *supra*.

4. *Re Jamet* (1929) 1 Ch 108 ; *Re Atherton*, (1912) 2 K B 251 *Re Paget* (1927) 2 Ch 85

5 See *Satendra Nath v State* 59 C W N 1 : 1955 Cal 29 *Dhirendranath v Jamini Kanta* 1958 Cal 163 *Dr Satendranath v Jasoda* 1959 S C 51, *supra*.

(*D*) *Mandatory powers* —This section also confers certain powers on the Court which it must exercise in the circumstances mentioned therein Its mandatory powers are as follows—

(*i*) in case where the amount of the life insurance fund has been diminished, it must (*a*) assess the sum by which the amount of the fund has been diminished, and (*b*) order the person guilty of it to contribute to the fund the whole or any part of that sum by way of compensation ,

(*ii*) in all cases, it has power to order payment of interest at such rate and from such time as it may determine ,

(*iii*) in case of attachment of property, it must—

(*a*) investigate the claim or objection, if any, in a summary manner ,

(*b*) give all persons who appear to it to be interested in any such property an opportunity of being heard ,

(*c*) make such order regarding the disposal of such property for the purpose of effectually enforcing any liability under this section ,

(*d*) decide all questions of any nature whatsoever arising under this section generally and regarding attachment of property in particular , and

(*e*) give due regard to the interests of all persons interested in such property other than the delinquent and persons in wrongful possession thereof

9 **Liability under the section sub section (3)**—Apart from the liability of any person proceeded against under this section for misapplication or retention for any money or property or for misfeasance or breach of trust or for diminishing the amount of life insurance fund such liability extends to every person who was at the relevant time a director, managing agent, manager, liquidator, secretary or other officer of the insurance company Such liability extends to them or any of them in the same manner and to the same extent as the person who has committed the act But such person, in order to exonerate himself from the same liability can prove that the act was committed without his consent or connivance and was not facilitated by any neglect or omission on his part It is only on such proof that he can be exonerated from the liability aforementioned[1]

Section 633 of the Companies Act, 1956, empowers the court to grant relief to an officer of the company in misfeasance proceedings when he can prove (1) that he acted honestly, (2) that he acted reasonably and [illegible] having regard to all the circumstances of the case he ought fairly to be [illegible] It has been said that the court in which such proceedings are pending is the only court which has jurisdiction to grant him relief in respect of [illegible] matter involved in those proceedings[2] There is a difference of opinion on the question whether relief under this section can be granted [illegible] criminal prosecutions The Kerala High Court has expressed [illegible] can be so given[3], while the Allahabad High Court has held [illegible] so given.[4] As against civil liability, relief can be [illegible]

1 *See* S 168 and Notes thereon *post*
2 *Re Gill & Eggs Safety Glass Ltd* (1940) 2 All E. R. 237 *see also Orissa Jute and Cotton Mills Ltd* 1956 Orissa 205
3 *In re Rama Iyer* [illegible]
4 [illegible]

against possible claims which the petitioner may apprehend to be made against him [1] Relief may also be given under this section where the directors applied the funds of the company honestly believed to be within their powers but ultimately held to be *ultra vires* [2]

10 Burden of proof sub section (2) —The burden of proof as laid down in the Evidence Act (I of 1872) means, "whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist When a person is bound to prove the existence of any fact, it said that the burden of proof lies on that person "[3] Thus, where a person competent to apply to the court against any person who can be complained against under this section ordinarily he must prove that the person complained against has committed the act But sub-section (2) of this section makes a departure from the said rule of evidence The sub-section provides that where it is proved that any money or property of an insurer has disappeared or has been lost, the Court shall presume that every person in charge of or having a disposing power over, such money or property at the relevant time, whether he is a director, manager, principal officer (or any other officer) has become accountable for such money or property within the meaning of this section What this sub-section requires is that only loss of property or money of the insurer is to be proved and such loss need not be proved to have been committed by the person proceeded against but the court shall presume that the said person is responsible for the loss and hence is liable under this section

The expression "shall presume" has been defined in the Evidence Act thus, "Whenever it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved [4] Hence, sub- section (2) further provides that the person proceeded against in order to be exonerated from becoming liable under this section must prove that the money or property has been utilized or disposed of in the ordinary course of that business or that he took all reasonable steps to prevent the disappearance or loss of such money or property or otherwise satisfactorily account for such disappearance or loss, in other words, the burden of proof rests on him to prove that he was not responsible for the loss or disappearance proved in the case

11 Classes of property deemed to belong to delinquent sub-section (5) —The following classes of property are, for the purposes of attachment by Court under this section, to belong to the delinquent—

(*a*) any property standing in the name of any person who is connected with the delinquent either by blood or marriage or otherwise or when there exist circumstances which would go to appear that the property belong to the delinquent, thus a *benami* will come under this ,

(*b*) the property of a private company in respect of which the delinquent is able to exercise or is entitled to acquire control either directly, or indirectly by himself or through his nominees, relatives partners or persons interested in any shares of the company

(*A*) *Nominee of a delinquent meaning of Explanation to sub section*(5)— The nominee of a delinquent means a person who possesses on behalf of such

1 *In re Filmistan Private Ltd* (1959) Com Cases 34 (Bom) Ch 543
Re Claridges Patent Asphalte Co , (1921) 1 3 S 101 of the said Act.
4 S 4 of the said Act

delinquent any right or power which is of such a nature as to enable the delinquent to exercise control over the company's affairs or who may be required to exercise on the direction or on behalf of the delinquent any right or power which is of such a nature as to entitle the delinquent to acquire control over the company's affairs

(*B*) "*Relative*", *meaning of*—Section 6 of the Companies Act, 1956, provides, "A person shall be deemed to be a relative of another if, and only if, (*a*) they are members of a Hindu undivided family, or (*b*) they are husband and wife, or (*c*) the one is related to the other in the manner indicated in Schedule I-A" The list of relatives as given in Schedule I-A is reproduced below

1 Father
2 Mother including step mother
3 Son (including step-son
4 Son's wife
5 Daughter (including step-daughter
6 Father's father
7 Father's mother
8 Mother's mother
9 Mother's father
10 Son's son
11 Son's son's wife
12 Son's daughter
13 Son's daughter's husband
14 Daughter's husband
15 Daughter's son
16 Daughter's son's wife
17 Daughter's daughter
18 Daughter's daughter husband
19 Brother (including step-brother)
20 Brother's wife
21 Sister (including step sister
22 Sister's husband
23 Husband's father
24 Husband's mother
25 Husband's sister
26 Wife's father
27 Wife's mother
28 Wife's brother
29 Wife's sister
30 Wife's sister's husband
31 Father's brother
32 Father's sister
33 Mother's brother
34 Mother's sister
35 Father's brother's wife
36 Father's sister's husband
37 Mother's brother's wife
38 Mother's sister's husband
39 Brother s son
40 Brother's son's wife
41 Brother's daughter
42 Sister's son
43 Sister's daughter
44 Father's brother's son
45 Father's brother's daughter
46 Father's sister's son
47 Father's sister's daughter
48 Mother's brother's son
49 Mother's brother's daughter

It may be noted that two important relatives, namely, "wife's sister's son" and "wife's brother's son" have been omitted from the list

Notice to and hearing of Controller

106A (1) When application is made to the Court for the making of any order to which this section applies, the Court shall, unless the Controller has himself made the application or has been made a party thereto, send a copy of the application together with intimation of the date fixed for the hearing thereof to the Controller and shall give him an opportunity of being heard

(2) The orders to which this section applies are the following, namely—

(*a*) an order for the attachment in execution of a decree of any deposit made under section 7 or section 98 ,

(*b*) an order under section 9 or section 59 for the return of any such deposit ,

(c) an order under section 36 sanctioning any arrangement for the transfer or amalgamation of life insurance business or any order consequential thereon,

(d) an order for the winding up of an insurance company or a provident society,

(e) an order under section 58 confirming a scheme for the partial winding up of an insurance company,

(f) an order under section 89 reducing the amount of the insurance contracts of a provident society

Notes

This section was inserted by Act XX of 1940

This section imposes a duty on the Court to hear the Controller before it passes any order on any application made to it covering matters mentioned in clauses (a) to (f) of sub-section (2) of this section Ordinarily, the Court hears all parties present before it and sometimes it also hears a party, whom it thinks, will be affected by its orders But this section enjoins that when an application is not made by the Controller himself or the latter has not been made a party in the application made to it in matters mentioned in this section the Court must send a copy of such application to the Controller, intimate him the date fixed for the hearing of the said application and give him an opportunity of being heard in the matter It is not that in every matter brought before the Court under this Act that the Controller is entitled to notice and to be heard but that he is entitled to such notice and to be heard in the following matters, namely,—

(i) where an application is made in execution of a decree for the attachment of any deposit under section 7 or section 98[1],

(ii) where an application is made under section 9 or section 59 for the return of deposits made under section 7 or section 98, an application under section 9 can be made by the insurer and under section 59 can be made by the liquidator or the assignee[2],

(iii) where an application is made under section 36 for sanctioning any arrangement for the transfer or amalgamation of life insurance business and for consequential reliefs thereon[3],

(iv) where an application for the winding up of an insurance company or provident society is made[4]

(v) where an application is made under section 58 for confirming a scheme of partial winding up[5],

(vi) where an application under section 89 is made for reduction of insurance contracts of a provident society[6],

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1 *See* Notes 6 to 8 under S 8 *supra* regarding availability of the deposits in execution of a decree obtained by a policy holder

2 *See* Note 3 to 6 under S 9 and Note 2 under S 59 *supra*

3 By the Amendment Act of 1950 the Controller has been made the sanctioning authority and hence no application under S 36 comes before the Court *see* Note under S 36 *supra*

4 As to the persons competent to apply for winding up *see* Note 7 under S 58 *supra* Note 6 under S 88 *supra*

5 *See* Note 3 and 6 under S 58 *supra*

6 *See* Notes under S 89 *supra*

When the Controller on being served with the notice appears before the Court he can not only oppose the application and can appeal against any order passed by the Court if he is aggrieved thereby [1]

Previous sanction of Advocate-General for institution of proceedings

107 (1) Except where proceedings are instituted by the Controller or an Administrator appointed under section 52A no proceedings under this Act against an insurer or any director, managing agent, manager, secretary or other officer of an insurer or any liquidator or any employee or agent of an insurer or any person who is liable under sub-section (2) of section 41 or any other person shall be instituted by any person unless he has previous thereto obtained the sanction of the Advocate-General o the State where the principal place of business in India of such insurer is situate to the institution of such proceedings

Provided that where the principal place of business of such insurer is situated in Union territory references in this section to the Advocate General of the State shall be construed as references to the Attorney-General of India

(2) This section shall apply in respect of a provident society as defined in Part III as it applies in respect of an insurer

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *Sanction of the Advocate-General for institution of any proceedings*

1 Legislative changes —The section was re numbered as sub-section (1) by Act XIII of 1941 and sub-section (2) was added by the same Act The words and figures "or an Administrator appointed under section 52A" and the words 'any director, managing agent or any other person" occurring in sub-section (1) were inserted and substituted respectively by Act LIV of 1955 and the insertion was made with effect from 1st November, 1955, and the word "India" was substituted by Act LXII of 1956 Proviso to sub section (1) was inserted by A O , 1950 The words "Union territory" occurring in the proviso were substituted for the words "Part C State" by the Adaptation of Laws (No 3) Order of 1956

2 Object and scope —The object of the section is to protect insurers, their directors, managing agent, manager, secretary or other officer or other persons mentioned in the section from being unnecessarily harassed through institution of frivolous or vexatious proceedings under this Act.

The section speaks of three things, namely, (i) that no proceedings under this Act shall be instituted , no distinction in proceedings has been made hence proceedings would cover both civil and criminal proceedings under the Act , (ii) such proceedings must be against one or more of the persons mentioned in the section, i e such proceedings must be against (a) an insurer (b) any director, managing agent, manager, secretary or other officer of

1 *Light of Asia Insurance Co In the matter of*, I. L. R. (1943) 2 Cal 85 : 46 C. W. N. 482 : 1942 Cal 578

insurer, (*c*) any liquidator, (*d*) any employee or agent of an insurer, or (*e*) any person acting as an insurance agent without a licence, or (*f*) any other person, and (iii) unless previous sanction is obtained of the Advocate General of the State in which the principal place of the insurer complained against is situate.] The three cardinal principles as stated above must apply to every person seeking institution of proceedings against those persons under the Act except the Controller or an Administrator appointed under section 52A who will not be required to obtain any previous sanction of the Advocate General for the institution of any proceedings against those persons as aforesaid.

3. **Applicability.**—The provisions of this section apply both to insurers, whether such insurers are companies or not and to provident societies as defined in Part III of the Act, and have been made applicable to the Life Insurance Corporation of India.

4. **Sanction of Advocate General for institution of any proceedings.**—This section does not require any particular form of sanction nor that it should always be in writing. But whether in respect of a civil or a criminal proceeding, the section requires that the Advocate-General must have proposals before him for the initiation by some person of particular proceedings of a defined nature under the Act against one or more of the specified persons and he must sanction the initiation of those proceedings by that person.

A valid previous sanction is essential to the jurisdiction of the Court to entertain the proceedings. There will be no jurisdiction if the initiation is by some person other than the person to whom sanction was given or of proceedings substantially different from those which were sanctioned. And, when the sanction is in a general form, the question is whether the sanction is valid, not whether the accused was prejudiced in his defence. Persons against whom proceedings are initiated are entitled to challenge the validity of the sanction, and when they do so, it is the duty of the prosecution to establish that proper sanction had been obtained. Thus, where privilege was claimed in respect of the application on which sanction had been given and although the trying Magistrate was allowed to see it for himself, the accused were not and it appeared from the Advocate General's file that the documents placed before him were prepared by the accused before the Act of 1938 and that while contemplating prosecution under the Act of 1912, he granted sanction only because the prosecution was being initiated after the new Act and the sanction was in a general form, *viz*., "for offences committed against Insurance Law" and the accused were convicted for offences in connection with a document prepared after the Act of 1938, it was held that there was no valid sanction and the proceedings were to be quashed.[1]

Merely because the Insurance Act, 1938, is an enactment of the Central Legislature operating in its exclusive legislative sphere, there is nothing *ultra vires* in a Provincial (State) Government taking steps to secure the enforcement of the law in respect of offences created by the Act or in the Advocate General of the Province (State) being specified in the Act as the person to control the initiation of proceedings or the Advocate-General being authorised to sanction proceedings to be initiated by his Provincial (State) Government or some one on behalf of that Government.[2]

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1 *Rajkishor v. King Emperor* 48 C. W. N. 147 : 45 Cr. L. J. 333 & 1944 P. C. 25 overruling *Rajkishor v. King-Emperor* 19 Luck. 385 : 1944 Oudh.

2 *Ibid.*

If the Advocate General made a mistake in not according a proper sanction to support the first prosecution, he can give a proper sanction to support a second prosecution [1]

5 Offences under the Companies Act, and this Act, procedure — Where allegations against an insurer amount to offences both under the Companies Act and the Insurance Act, the should be prosecuted under the latter Act and any prosecution under the Companies Act should be limited to matters which are offences under that Act only

The words "who is liable," etc , in this section qualify the words "any person" and accordingly sanction of the Advocate-General is necessary before a private prosecution can be started against an insurer or any director, manager or officer of an insurer, whatever the offence alleged may be [2]

Prosecution of company offences under the Penal Code are not affected by the provisions relating to prosecution under the Companies Act [3], nor is the taking of any proceeding under section 543 of the Companies Act a bar to the institution of a prosecution under section 545 of the said Act [4]

Under the English Companies Act, the Court has power to direct a prosecution of delinquent directors, manager, officers or members of the company and in a proper case will do so [5] It has also the power to direct the liquidator to prosecute [6] When from a report of the Inspector any offence is disclosed in relation to the company for which any person should be criminally prosecuted, the Board of Trade are required to refer the matter to the Director of Public Prosecutions (or for an offence in Scotland, to the Lord Advocate) [7]

Power of Court to grant relief

108 If in any proceeding, civil or criminal, it appears to the Court hearing the case that a person is or may be liable in respect of negligence, default, breach of duty or breach of trust but that he has acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him either wholly or partly from his liability on such terms as it may thinks fit

SYNOPSIS

1 *Object and scope* 2 *Court's power to grant relief*

1 Object and scope — The object of the section is to provide against undue hardship in deserving cases and give relief from liability to persons who though technically guilty of negligence, default, breach of duty or breach of trust are able to convince the conscience of the Court that they have acted honestly and reasonably and having regard to the circumstances of their cases

1 *Jaswantray Manilal v State* I L R (1945) Bom 524 47 Bom L R 55 : (1955) 25 Com Cas (Ins) 12 1955 Bom 259 1955 Cr L J 1049

2 *Surendra v Folipada* 44 C W N 454 : I L R (1940) 1 Cal 575 : 1940 Cal 232 41 Cr L J 625

3 *Dhirendra Nath v Jamini Kanta* 1958 Cal 163 *Al Vaityanathan v Sub-Divisional Magistrate* 1957 Mad 851 see *Dr Satindranath v Jasoda* 1959 S C 51 cited *supra*

4 *Satindra Nath v State*, 59 C W N 1 1955 Cal 29

5 *Re London and Globe Finance Corporation* (1903) 1 Ch 728

6 S 334 of the said Act

7 *See* Palmer's Company Law, 20th Ed , p 656.

they ought fairly to be excused from the said charge or charges made against them This section gives relief to honest persons [1]

The scope of the section is wide as relief under it can be given to any person whether he is a director, manager, managing agent, secretary, partner or agent even the liquidator, auditors or actuary would come within its fold [2] The section is wide enough to confer jurisdiction on the Court to grant anticipatory relief in respect of apprehended proceedings whether civil or criminal [3]

The provisions of this section are more or less similar to those contained in section 633 of the Companies Act, 1956 [4] The main difference between these two sections is that the Court should not, under the Companies Act grant relief from a civil liability which may attach to an office in respect of any negligence, default, etc in a criminal proceeding But there is no such restriction on the powers of the Court under this section of this Act Moreover, under the Companies Act the Court must not give any relief to any officer unless notice on the Registrar or any person it thinks necessary to show cause why such relief should not be granted but under this section no such notice is required to be served on the Controller or the Registrar or any other person for the Court to grant the relief

The Court has been given the discretion to grant relief either wholly or in part and upon such terms as it thinks fit The proceeding in which such relief can be granted is not, unlike the Companies Act, restricted to misfeasance proceedings but it includes any proceeding either civil or criminal The relief can be granted by the Court *suo motu* or upon the application of the person concerned

The section has been made applicable to the Life Insurance Corporation of India

2 **Court's power to grant relief** —For granting the relief under this section the Court must be satisfied during hearing of the case that the person concerned has acted (i) honestly and (ii) reasonably and (iii) that having regard to all the circumstances of the case he ought fairly to be excused It is the Court before whom the proceedings are pending who can grant relief under this section and not any other Court Thus, if a prosecution is pending before a magistrate it is he who can grant the relief under this section regarding the subject-matter of the prosecution and the High Court cannot relieve the person prosecuted from liability of pending prosecution [5] Before this section can be resorted to it must be found that the person to be given the relief had acted honestly and reasonably In other words the conduct of the person must satisfy the tow fold requirement of lack of dishonesty as well as lack of unreasonableness, and honesty by itself would not be enough [6]

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1 See *Re Claridges Patent Asphalte Co* (1921) 1 Ch 543

2. See *Alexander Thomson Montgomery* v *Registrar of Joint Stock Companies* 1 L.R (1945) 2 Cal 437

3. See *In re Famous Private Ltd* (1959) Com Cases 34 Bom.

4 S 251 of the Act of 1913 and S 448 of the English Companies Act 1948.

5 *Orissa Jute and Cotton Mills Ltd., In the matter of*, 22 Cut L. T 231 : 1956 Orissa 205 ; *see* also *Re Gilt Edge Safety Glass Ltd* (1940) 2 All E. R 337 ; *see* also Note 9 under S 106 *supra.*

6 See *Saraswati Printers Ltd* v *State* I L. R. (1960) 10 Raj. 857 : (1960) 30 Com. Cas 523 : (1961) 2 Cr L. J 416

109 No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act

Cognizance of offences

Notes

Only Presidency Magistrates in the presidency towns of Calcutta, Madras and Bombay and the Magistrates of the first class have been invested with the powers to try offences under this Act A second or third class Magistrate shall have no power to try any offence under this Act

'Taking cognizance of an offence" liberally means "taking notice of an offence" and includes the intention of initiating jud cial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes But where the Magistrate applies his mind not for the above purpose but for taking action of some other kind, such as, for ordering investigation to be made or for issuing a search warrant, he cannot be said to have taken cognizance of the offence [1] Even if a complaint under this Act is made to a second or third class Magistrate who is not competent to take cognizance of the case, he shall, under section 201 of Code of Criminal Procedure, return the complaint for presentation to the proper court with an endorsement to that effect

When the section says that offences under this Act are to be tried either by a Presidency Magistrate or a Magistrate of the first class and since no procedure is prescribed for such trial, the procedure laid down in the Code of Criminal Procedure (Act V of 1898) for trial of offences has to be followed It may also be remembered that the burden of proof, as is usual in criminal cases, rests on the prosecution and it is for the prosecution to prove facts which will bring the case within any of the penal provisions of this Act [2]

The section has been made applicable to the Life Insurance Corporation of India

110 (1) An appeal shall lie to the Court having jurisdiction from any of the following orders, namely,—

Appeals

(*a*) an order under section 3 refusing to register, or cancelling the registration of, an insurer ,

(*b*) an order under section 5 directing the insurer to change his name ,

(*c*) an order under section 42 cancelling the licence issued to an agent ,

(*d*) an order under section 75 refusing to register an amendment of rules ,

(*e*) an order under section 87 or section 87A , or

(*f*) an order made in the course of the winding up or insolvency of an insurer or a provident society

1 *Agni Kumar* 1950 Cal 437 52 Cr L J 800 approved in *Chari's* case 52 Cr L J 775 (S C)

2 See *I v Governor of Brixton Prison* (1926) 1 K B 127 (1944) 1 M L J 390

(2) The Court having jurisdiction for the purposes of sub section (1) shall be the principal Court of civil jurisdiction within whose local limits, the principal place of business of the insurer concerned, is situate

(3) An appeal shall lie from any order made under sub section (1) to the authority authorised to hear appeals from the decisions of the Court making the same and the decision on such appeal shall be final

(4) No appeal under this section shall be entertained unless it is made before the expiration of four months from the date on which the order appealed against was communicated to the appellant

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Orders appealable*
4 *Court to which appeal shall lie Forum*
5 *Order passed on appeal from appellate order final*
6 *Limitation for filing appeal*

1 Legislative changes —Clause (*e*) of sub section (1) of this section was substituted by Act VI of 1946 Sub section (4) was added by Act XIII of 1941

2 Object and scope —The object of the section is to confer a right of appeal on the person or persons aggrieved from orders specified in clauses (*a*) to (*f*) of sub-section (1) A right of appeal does not exist in the nature of things and it being a creature of the statute, it must be given by express enactment and such right can neither be implied nor presumed An appeal is a statutary remedy Unless a statute gives a right of appeal there cannot be an appeal against any order whether it is made administratively or whether it is made judicially [1]

Orders made appealable under this section are those specified in clauses (*a*) to (*f*) of sub section (1) of which orders mentioned in clauses (*a*) to (*g*) refer to those passed by the Controller and orders mentioned in clause (*f*) thereof refer to those passed by the liquidator The court to which an appeal from this section will lie is ordinarily the principal civil court of original jurisdiction, *i e*, the District Court or the High Court according as the principal place of business of the insurer lies within the original jurisdiction of the District Court or the High Court exercising such jurisdiction A second appeal is also provided from the orders passed in appeal and the order passed in appeal from the appellate order has been made final

This section does not curtail the right of appeal under clause 15 of the Letters Patent against orders of "the court under the Act but it extends the right of appeal against certain orders of officers under the Act which would not be otherwise appealable [2]

Having regard to the fact that the orders of the authorities under this Act do not comply with or follow any specific procedure, the most convenient course would be for appeals to be by petition setting out the objections

1 *R v Cornwall Quarter Sessions Appeal Committee* (1956) 2 All E R 872 *see also Oberoi Moore v Akeesh Tayee* 1935 P C 5 *Gurudayal v Subhash Chowdhury* 1957 S C 510

2 *Light of Asia Insurance Co Ltd v Sarat Nath* I L R (1942) 2 Cal 85 46 C W N 441 1942 Cal 578

seriatim in a manner analogous to grounds of appeal[1] There is no procedure prescribed for appeals and in its absence the procedure provided in Order XLI of the Code of Civil Procedure may also conveniently be followed specially when the appeal is to be heard by the District Court or the High Court

The section has been made applicable to the Life Insurance Corporation of India

3 **Orders appealable** —Orders made appealable under this section are orders made by the Controller and the liquidator in respect both of insurers and provident societies as defined in Part III of the Act The orders made appealable are as follows

(i) an order of the Controller under section 3 of the Act refusing to register or cancelling the registration of an insurer , but an order made under section 70 of the Act refusing to register or cancelling the registration of a provident society has not been made appealable ,

(ii) an order of the Controller under section 5 of the Act directing the insurer to change his name but an order made under section 70A of the Act by the Controller in respect of a provident society has not been made appealable ,

(iii) an order of the Controller under section 42 of the Act cancelling the licence of an insurance agent ,

(iv) an order of the Controller under section 75 of the Act refusing to register an amendment of the rules of a provident society ,

(v) an order of the Controller under section 87 of the Act directing inquiry into the affairs of a provident society either to be made by the Controller himself or by any person on his behalf, but an order under section 22 of the Controller ordering revaluation has not been made appealable ,

(vi) an order of the Controller under section 75A of the Act made with regard to amalgamation or transfer of insurance business of provident societies , but an order under section 36 passed by the Controller in respect of an insurer has not been made appealable,

(vii) all orders made in the course of the winding up or insolvency of an insurer or a provident society, whether passed by the court or the liquidator, as the case may be

With regard to appeals from orders in winding up by the court section 433 of the Companies Act, 1936 provides, 'Appeals from any order made or decision given in the matter of the winding up of a company by the court shall lie to the same court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the court in cases within its ordinary jurisdiction '[2]

The scheme of the Companies Act is that whereas with regard to other matters specific appeals are provided, under section 483, every order and decision in winding up is made subject to appeal So also is in this section, namely, whereas in clauses (*a*) to (*e*) specific appeals

1 *Genuine Insurance Co Ltd In re* I L R (1940) 2 Cal 127 1940 Cal 529

2 S 202 of the Act of 1913 of the English Act of 19

provided in respect of orders mentioned but clause (*f*) makes every order and decision in winding up appealable However, it does not follow from this that a purely procedural order made by a Judge in a winding up is subject to appeal [1] Every order which may be construed as a judicial order as distinguished from an administrative order is appealable Thus, the approval or disapproval of a power of sale by the liquidator involves a judicial determination of the question and such an order is appealable [2]

4 **Court to which appeal shall lie Forum** —Sub-section (2) lays down the forum where an appeal provided in several clauses of sub section (1) will lie The appeal under this section shall lie to the principal court of civil jurisdiction within the local limits of whose jurisdiction the principal place of business of the insurer concerned is situate Thus, appellate forum may be the District Court or the High Court according as the principal place of business of the insurer concerned is situate within the territorial limits of the ordinary civil jurisdiction either of the District Court or of the High Court In other words, the *situs* of the principal place of business of the insurer determines the forum of appeal from the original order which is popularly known as the first appeal

But with regard to the appeal from an appellate order which is popularly known as the second appeal, sub section (2) of this section lays down that such an appeal shall lie to the authority authorised to hear appeals from the Court making the order, that is to say, where the decision in appeal is made by a District Court, an appeal from the appellate order of that Court will lie to the High Court and when made by a single Judge of the High Court in its ordinary original civil jurisdiction, it will lie to the Division Court of the High Court [3]

5 **Order passed on appeal from appellate order final** —Sub-section (3) of this section lays down that an order passed on appeal from an appellate order is final, *i e*, a third appeal is not contemplated under the Act When a second appeal is provided by this section, an appeal may also lie under this sub section from an appellate order passed *ex parte*

6 **Limitation for filing appeal** —The period of limitation within which an appeal from an original order or an appeal from an appellate order has to be filed in, or presented to, the appellate Court concerned as provided in sub section (4) of this section, is before the expiration of four months from the date on which the order appealed against was communicated to the appellant So the ordinary period of limitation as provided in the Limitation Act for an appeal to the District Court being 30 days and to the High Court being 90 days will not apply to appeals under this Act

110A The Controller may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him The exercise or discharge of any of the powers or

Delegation of power and duties of Controller

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1 See *Western India Theatres Ltd v Ishwarbhai Somabhai Patel* I L R (1959) Bom 295 1959 Bom 386 *s e* also *Bhachha Paj Factories Ltd v Hirjee Mills* 57 Bom L R 378

2 See *Shankarlal Poddar Govinda Prasad* (1960) Com Cases 187 *see* also *J N Bhatt v Official Liquidator* 1960 Assam 190 where it has been said that a person not a party to the proceeding cannot appeal *Premier Insurance Co Ltd v Davanagere Cotton Mills Ltd* 1961 Mys 1 where it has been held that an appeal from an order in winding up by a single Judge of the High Court lies to Division Court

3 See *Premier Insurance Co Ltd v Davanagere Cotton Mills Ltd* 1961 Mys 1

duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Controller may impose, and shall be subject to his control and revision

Signature of documents

110B Every document which is required by this Act or by any rule made thereunder to be signed by the Controller or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Controller, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government

Power to call for information

110C (1) The Controller may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor

SYNOPSIS

1 *Legislative changes*
2 *Delegation of powers and duties of Controller*
3 *Signature of documents by mechanical process*
4 *Controller's power to call for information*

1 Legislative changes—Sections 110A and 110B were inserted by Act XX of 1940 Section 110C was inserted by Act XLVII of 1950

2 Delegation of powers and duties of Controller—Section 110A confers discretionary power on the Controller to delegate any of his powers or duties under the Act to any person subordinate to him either by general or by special order in that behalf The person to whom the Controller's powers or duties is delegated must exercise those powers or discharge those duties subject to any restrictions, limitations and conditions if imposed by the Controller Such delegated powers or duties must be subject to control and revision of the Controller i e the Controller shall have power to revise the orders passed by his deputy

It is desirable that the Controller should not delegate any of his powers by virtue of which he passes orders and from which appeals are provided under section 110 of the Act It is intended that some of his administrative powers may be delegated but not those powers which he has to exercise judicially

3 Signature of documents by mechanical process—The authentication of a document depends upon the signature made on it Any document without bearing the signature of the person concerned is treated as a scrap of paper Similarly, where an order is passed but the order has not been signed by the officer or the authority concerned, it has no legal effect at all As the Controller or his deputy has to deal with various matters relating to various

provided in respect of orders mentioned but clause (*f*) makes every order and decision in winding up appealable However, it does not follow from this that a purely procedural order made by a Judge in a winding up is subject to appeal [1] Every order which may be construed as a judicial order as distinguished from an administrative order is appealable Thus, the approval or disapproval of a power of sale by the liquidator involves a judicial determination of the question and such an order is appealable [2]

4 **Court to which appeal shall lie Forum** —Sub-section (2) lays down the forum where an appeal provided in several clauses of sub section (1) will lie The appeal under this section shall lie to the principal court of civil jurisdiction within the local limits of whose jurisdiction the principal place of business of the insurer concerned is situate Thus, appellate forum may be the District Court or the High Court according as the principal place of business of the insurer concerned is situate within the territorial limits of the ordinary civil jurisdiction either of the District Court or of the High Court In other words, the *situs* of the principal place of business of the insurer determines the forum of appeal from the original order which is popularly known as the first appeal

But with regard to the appeal from an appellate order which is popularly known as the second appeal, sub-section (2) of this section lays down that such an appeal shall lie to the authority authorised to hear appeals from the Court making the order, that is to say, where the decision in appeal is made by a District Court, an appeal from the appellate order of that Court will lie to the High Court and when made by a single Judge of the High Court in its ordinary original civil jurisdiction, it will lie to the Division Court of the High Court [3]

5 **Order passed on appeal from appellate order final** —Sub section (3) of this section lays down that an order passed on appeal from an appellate order is final, *i e*, a third appeal is not contemplated under the Act When a second appeal is provided by this section, an appeal may also lie under this sub section from an appellate order passed *ex parte*

6 **Limitation for filing appeal** —The period of limitation within which an appeal from an original order or an appeal from an appellate order has to be filed in or presented to, the appellate Court concerned, as provided in sub-section (4) of this section, is before the expiration of four months from the date on which the order appealed against was communicated to the appellant So the ordinary period of limitation as provided in the Limitation Act for an appeal to the District Court being 30 days and to the High Court being 90 days, will not apply to appeals under this Act

Delegation of power and duties of Controller

110A The Controller may by general or special order delegate any of his powers or duties under this Act to any person subordinate to him The exercise or discharge of any of the powers or

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1 See *Western India Theatres Ltd* v *Ishwarbhai Somabhai Patel* I L R (1959) Bom 295 1959 Bom 386 *s e* also *Bhachha Pvt Factories Ltd* v *Hirjee Mills* 57 Bom L R 378

2 See *Shankarlal Poddar* v *Govinda Prasad* (1960) Com Cases 187 *see* also *J N Bowri* v *Official Liquidator* 1960 Assam 190 where it has been said that a person not a party to the proceeding cannot appeal *Premier Insurance Co Ltd* v *Davanagere Cotton Mills Ltd* 1961 Mys 1 where it has been held that an appeal from an order in winding up by a single Judge of the High Court lies to Division Court

3 See *Premier Insurance Co Ltd* v *Davanagere Cotton Mills Ltd* 1961 Mys 1

duties so delegated shall be subject to such restrictions, limitations and conditions, if any, as the Controller may impose, and shall be subject to his control and revision

Signature of documents

110B Every document which is required by this Act or by any rule made thereunder to be signed by the Controller or by any person subordinate to him or by any officer authorised by him under sub-section (1) of section 42 shall be deemed to be properly signed, if it bears a facsimile of the signature of such Controller, person or officer printed, engraved, lithographed or impressed by any other mechanical process approved by the Central Government

Power to call for information

110C (1) The Controller may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor

SYNOPSIS

1 *Legislative changes*
2 *Delegation of powers and duties of Controller*
3 *Signature of documents by mechanical process*
4 *Controller's power to call for information*

1 **Legislative changes**—Sections 110A and 110B were inserted by Act XX of 1940 Section 110C was inserted by Act XLVII of 1950

2 **Delegation of powers and duties of Controller**—Section 110A confers discretionary power on the Controller to delegate any of his powers or duties under the Act to any person subordinate to him either by general or by special order in that behalf The person to whom the Controller's powers or duties is delegated must exercise those powers or discharge those duties subject to any restrictions, limitations and conditions if imposed by the Controller Such delegated powers or duties must be subject to control and revision of the Controller, *i e* the Controller shall have power to revise the orders passed by his deputy

It is desirable that the Controller should not delegate any of his powers by virtue of which he passes orders and from which appeals are provided under section 110 of the Act It is intended that some of his administrative powers may be delegated but not those powers which he has to exercise judicially

3 **Signature of documents by mechanical process**—The authentication of a document depends upon the signature made on it Any document without bearing the signature of the person concerned is treated as a scrap of paper Similarly, where an order is passed but the order has not been signed by the officer or the authority concerned, it has no legal effect at all As the Controller or his deputy has to deal with various matters relating to various

insurers and numerous persons it becomes next to impossible for him to sign all the papers Hence provisions in section 110B have been made that such signature being a facsimile of his signature if printed, engraved, lithographed or impressed by any mechanical process would be a valid signature to give its force But the method by which such facsimile of his signature can be impressed must be approved by the Central Government All administrative orders may be signed by this mechanical method but where the Controller has to apply his judicial mind in any matter and specially where an appeal is provided against his order, it is desirable that he should sign the order himself

4 **Controller s power to call for information** —Section 110C confers discretionary power on the Controller to require any insurer to supply him with any information relating to his business He must call for such information by notice in writing to the insurer and reasonable date has to be given to the insurer to supply the required information When such a notice is received by the insurer it is his duty to supply the information within the specified time and the information so furnished must be certified by the principal officer of the insurer and if so required in the notice by an auditor This power to call for information is in addition to the powers which the Controller has under sections 21, 22, 28 and 44A of the Act

5 **Applicability** —Sections 110A, 110B and 110C shall apply to the Life Insurance Corporation of India [1]

Service of notices

111 (1) Any process or notice required to be served on an insurer or provident society shall be sufficiently served if addressed to any person registered with the Controller as a person authorised to accept notice on behalf of the insurer or provident society and left at, or sent by registered post to, the address of such person as registered with the Controller

(2) Any notice or other document which is by this Act required to be sent to any policy holder may be addressed and sent to the person to whom notices respecting such policy are usually sent and any notice so addressed and sent shall be deemed to be notice to the holder of such policy

Provided that, where any person claiming to be interested in a policy as transferee, assignee or nominee has given to an insurer or to a provident society notice in writing of his interest, any notice which is by this Act required to be sent to policy holders shall also be sent to such person at the address specified by him in his notice

SYNOPSIS

1 *Object and scope*
2 *Notice to insurer or provident society*
3 *Notice to policy holder*
4 *Notice to transferee assignee or nominee of the policy*
5 *Manner of service of notice or process*
6 *Applicability*

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1 *See* S 43 (1) L I C Act *post*

1 **Object and scope** —The object of this section is to provide a procedure for serving process or notice to an insurer or a provident society or to any policy holder or his transferee, assignee or nominee where such notice is required to be served on him by this Act The section provides a uniform procedure for all The section is in general terms and is to be applicable to all persons and for all purposes required to be served under the Act

2 **Notice to insurer or provident society** —Where a notice or a process is required to be served on an insurer or a provident society, it must be served on any person registered with the Controller as a person authorised to accept notices on behalf of the insurer or provident society Such registration of person authorised to accept notices is made under section 3 (2) (*b*) in case of an insurer and under section 63 (*c*) in case of a provident society [1]

3 **Notice to policy-holder** —Where a notice or other document is required by the Act to be sent to any policy holder, such notice may be addressed and sent to the person to whom notices respecting such policy are usually sent [2]

4 **Notice to transferee, assignee or nominee of the policy** — Proviso to sub section (2) provides that transferees, assignees and nominees who have given notice in writing of their interests in policies are entitled to be served with notices just in the same way as policy holders are required to be served [3] For assignment and nominee, see sections 38 and 39, *supra*

5 **Manner of service of notice or process** —Where the notice is required to be served on the insurer or the provident society such notice or process must be addressed to the person registered with the Controller as a person authorised to accept notices and it may either be left at the address of such person or be sent by registered post to his address But in cases of notices to policy-holders or their transferees assignees or nominees should be addressed and sent to the persons to whom notices of such policies are usually sent and when any such notice is so addressed and sent, it shall be deemed to be notice to the holders of those policies

Similar provisions regarding notice to policy-holders have also been made in the English Insurance Companies Act, 1958 [4] "The service shall be deemed to be effected by properly addressing prepaying and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post" [5]

6 **Applicability** —The section has been made applicable to the Life Insurance Corporation of India

Declaration of interim bonuses

112 Notwithstanding anything to the contrary contained in this Act an insurer may on the basis of life insurance business declare by way of an interim bonus or bonuses to [illegible]

1 Regarding notices required to be served on an insurer *see* sections 21 22 27 42 48 (3) 44D 47 52A 52G of the Act

2. Regarding notice to policy-holders *see* Sections 50 60 61 87 (1) and [illegible]

3 *See* S 60 *supra*

[illegible]

whose policies mature for payment by reason of death or otherwise during the intervaluation period on the recommendation of the investigating actuary made at the last preceding valuation

Notes

This section is to be read as a proviso to section 49 where restrictions have been imposed on declaration or payment of dividend to shareholders or bonus to policy-holders except where there is a surplus shown in the valuation balance sheet of an actuarial valuation made of the assets and liabilities of the insurer under section 13 of the Act.

This section permits, notwithstanding the provisions of section 49, the insurer carrying on life insurance business to declare an *interim* bonus or bonuses during the inter-valuation period, *i e*, within three years before the last preceding valuation But such *interim* bonus or bonuses must be available to those policy holders whose policies mature for payment either by reason of death or otherwise during the said period and not to any other policy holders Such *interim* bonus or bonuses must be declared on the recommendation of the investigating actuary who made the last preceding valuation and on the basis of that valuation and not otherwise

The provisions made in this section are wholesome in the sense that the policy holders whose policies mature for payment for whatever reasons become entitled to the payment of such bonuses declared in the *interim* period to which they would not have been entitled had not these provisions in this section been made

Acquisition of surrender values by policy

113 (1) A policy of life insurance under which the whole of the benefits become payable either on the occurrence, or at a fixed interval or fixed intervals after the occurrence of a contingency which is bound to happen shall, if all premiums have been paid for at least three consecutive years in the case of a policy issued by an insurer, or five years in the case of a policy issued by a provident society as defined in Part III, acquire a guaranteed surrender value, to which shall be added the surrender value of any subsisting bonus already attached to the policy, and every such policy issued by an insurer shall show the guaranteed surrender value of the policy at the close of each year after the second year of its currency or at the close of each period of three years throughout the currency of the policy

Provided that the requirements of this sub section as to the addition of the surrender value of the bonus attaching to a policy at surrender shall be deemed to have been complied with where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy

Provided further that the requirements of this sub section as to the showing of the guaranteed surrender value on a policy shall be deemed to have been complied with where the insurer shows

on the policy the guaranteed surrender value of the policy by means of a formula accepted in this behalf by the Controller as satisfying the said requirements

Provided further that the provisions of this sub section as to the showing of the guaranteed surrender value on a policy shall not take effect until after the expiry of six months from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf

(2) Notwithstanding any contract to the contrary, a policy which has acquired a surrender value shall not lapse by reason of the non-payment of further premiums but shall be kept alive to the extent of the paid-up sum insured and the paid-up sum insured shall for the purposes of this sub-section include in full all subsisting reversionary bonuses that have already attached to the policy, and shall, where the policy is one on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, before the inclusion of such bonuses not less than the amount bearing to the total sum insured by the policy exclusive of bonuses the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable

(3) A policy kept alive to the extent of the paid-up sum insured under sub section (2) shall not be entitled by virtue of that sub section to participate in any profits declared distributable after the conversion of the policy into a paid-up policy

(4) Sub section (2) and sub section (3) shall not apply—

(*a*) where the paid-up sum insured by a policy, being a policy issued by an insurer, is less than one hundred rupees inclusive of any attached bonus, or takes the form of an annuity of less than twenty-five rupees, or where the paid-up sum insured by a policy, being a policy issued by a provident society as defined in Part III, is less than fifty rupees inclusive of any attached bonuses or takes the form of an annuity of less than twenty five rupees, or

(*b*) where the parties after the default has occurred in the payment of the premium agree in writing to some other arrangement, or

(*c*) to policies in which the surrender value is automatically applied under the terms of the contract to maintaining the policy in force after its lapse through non payment of premium

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Applicability*
4 *A policy of insurance to acquire a guaranteed surrender value, circumstances when sub section* (1)
5 *Compliance with the requirements of section, circumstances of Provisos* (1) (2) *and* (3) *to sub section* (1)
6 *Policy acquiring surrender value, not to lapse*
7 *Paid up policy not to participate in any profits*
8 *Exceptions to the rule of automatic conversion to paid up policies*

1 Legislative changes —Sub sections (1) and (2) were substituted for the original sub sections (1) and (2) by Act XIII of 1941, the original sub-section (3) was re-numbered as sub section (4) by section 61 of the said Act the original clause (*a*) in sub section (4) was omitted and clause (*a*) therein was substituted for the original clause (*b*) the original clauses (*c*) and (*d*) were re-lettered respectively as (*b*) and (*c*) also by the same Act

The words 'such date" occurring in the third proviso refers to 1st January, 1942 The word "Controller" occurring in the section was substituted by Act XLVII of 1950

2 Object and scope —The object of the section is to confer certain valuable rights upon the policy holders who are unable to keep their policies alive by payment of further premiums The rights conferred upon them are that they have been given the option or are put to their election either to claim the surrender value of the policy or to have it converted into a paid up policy But to entitle them to this right or benefit, the policy holders must have paid the premiums for at least three consecutive years in the case of a policy issued by an insurer, and for five consecutive years in the case of a policy issued by a provident society

The scope of this section was originally limited to life insurance policies on which a definite number of premiums was payable but by virtue of the amendment of 1941 by Act XIII of 1941, its scope has been extended to life insurance policies on which unlimited payment of premiums is payable and also to policies issued by a provident society as defined in Part III of the Act The amendment of 1941 also requires the guaranteed surrender value to be shown to every life policy entitled to such benefits at the close of each year after the second year or at the close of each period of three years The insurer has also been given the option to show such guaranteed value by means of a formula accepted by the Controller In such value the surrender value of the bonus attaching to the policy has to be included Such surrender value has to be shown as provided in this section on the said policies after the expiry of six months from 1st January, 1942, which is the date appointed by the Central Government

Sub-section (2) further provides that a policy of life insurance must not be lapsed when it has acquired a guaranteed surrender value and must be kept alive to the extent of the paid up sum insured and the latter sum must include all subsisting reversionary bonuses attaching to the policy up to the date of its conversion into a paid up policy A formula has also been given in the said sub-section for calculating the said 'paid-up sum insured' in case a policy on which the number of annual premiums payable is fixed but not in any other kind of policies

Sub section (3) provides that a policy so kept alive up to its "paid up sum insured' shall not be entitled to participate in any profits after its conversion into a paid up policy

Sub section (1) lays down certain exceptions to the rule of automatic conversion of a policy into a paid one, namely, where the paid-up sum amounts to less than Rs 100, in case of a policy issued by an insurer, and less than Rs 25, in case of a policy issued by a provident society or where the annuity is less than Rs 25 in both cases or where the parties come to a fresh agreement in writing or where a policy contains automatic extension of applying the surrender value to keep the policy alive

3 **Applicability**—The provisions of this section are applicable to policies of life insurance issued by an insurer or a provident society as defined in Part III of the Act and have also been applied to the Life Insurance Corporation of India So an insurer or a provident society issuing policies of life insurance will come within the ambit of this section

4 **A policy of life insurance to acquire a guaranteed surrender value, circumstances when sub section (1)**—A policy of life insurance shall acquire a guaranteed surrender value only when all premiums in respect of it have been paid for at least (i) three consecutive years in case it is issued by an insurer or (ii) five years in the case of a policy issued by a provident society as defined in Part III of the Act The guaranteed surrender value which may also be called the statutory surrender value must consist of the surrender value *plus* the surrender value of any subsisting bonus already attached to the policy

(*A*) "*Surrender value*", *meaning of*—The expression 'surrender value" ordinarily means a value which an insurer contracts with the assured to pay to the latter on his surrendering the life policy to the former after the policy having remained in force for some time and in respect of which all premiums during the said period have been paid in full Sometimes stipulations are made in a life policy whereby the insurer agrees to apply any surrender value which has accrued due thereon towards the payment of unpaid premiums until the said surrender value is exhausted This section like other statutes in the British Dominions and in the United States of America prohibits the forfeiture of a policy so long as the surrender value is sufficient to meet the premium The insurer is bound to keep the policy alive as aforesaid or to give the assured the option of taking a paid up policy for a lesser amount Sometimes a policy may not acquire any surrender value where the assured's only contractual right in the event of non payment of premium is to a fully paid up life or endowment policy of a reduced amount [1] The assured becomes entitled on notice to surrender the policy and to be paid its surrender value Once the notice has become effective, the surrender value will only be payable even though the assured dies before the actual surrender of the policy or the payment of the surrender value [2] In considering whether the surrender value was sufficient to pay the year's premium or not the fact that a portion of the year's premium had been paid was not to be overlooked [3]

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1 *Equitable Life Assurance Society of the U S A v Reed* (1914) A C 587 *see also Williams Union Central* (1933) 291 U S 170 as to the exercise of the option by a husband where the policy is effected for the benefit of his wife see *Re Policy of the Equitable Life Assurance Society of U S A and Mitchell* (1911) 27 T L R 213 *Re Fleetwood's Policy* (1926) Ch 48

2 *Ingram Johnston v Century Insurance Co* (1909) S C 1032

3 *National India Life Insurance Co Ltd v Mahadevan* 56 Mad 980 1933 Mad 680 *see also Sankara Menon v Empire of India Life Assurance Co Ltd* 61 M L J 388 1932 Mad 241 where failure to make application for revival of paid up policy within 12 months of default in paying premium was held that the policy was not revivable nor was he entitled to a paid up policy as he made the claim only after the lapse of more than four years

Again where a policy having acquired a surrender value after three years subsequent premiums were not paid and the policy was kept alive by applying the said value and subsequent premiums although not paid on due date but paid within the days of grace, the premiums paid were held effective as if paid before due date [1] But where a fixed period is stipulated in the policy during which it was kept alive in default of payment of premiums, the premiums paid after the said stipulated period but within the days of grace may be refused even though the policy has acquired a surrender value [2] Again, where it is stipulated in the policy that the surrender value will remain the property of the policy holder even if the policy lapses on account of non payment of premium, the insurer will not be heard to say that he applied the surrender value for keeping the policy alive by reference to the prospectus or rules of the company which were not referred to in the policy [3] But a stipulation in a loan bond where a policy holder took loan on the security of his policy that the insurer shall have the right to cancel the policy in default of payment of the loan and interest and to apply the surrender value to the repayment of the said loan, such stipulation was held to be illegal as being a clog on the equity of redemption [4] The principle upon which the surrender value is based is that the value of a policy usually increases according to the length of the period during which the policy has remained in force [5]

(*B*) *Duty of the insurer* —The duty of the insurer as envisaged in this section is that he must show the guaranteed surrender value of the policy (*i*) at the close of each year after the second year of its currency, or (*ii*) at the close of each period of three years throughout the currency of the policy

5 Compliance with the requirements of section, circumstances of Provisos (1), (2) and (3) to sub section (1) —The requirements as to (*i*) the addition of the surrender value of the bonus attaching to a policy at surrender and (*ii*) the showing of guaranteed surrender value on it shall b deemed to have been complied with in case of (*i*) where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy, and in case of (*ii*) where the insurer shows on the policy its guaranteed surrender value by means of a formula accepted in this behalf by the Controller

The third proviso to sub-section (1) lays down that the requirements as to the showing of guaranteed surrender value on the policy as laid down in sub section (1) shall not take effect until after the expiry of six months from 1st January, 1942 which is the date appointed by the Central Government in this behalf *i e*, all life policies issued after 1st July, 1942, must show on them the guaranteed surrender values as laid down in the said sub-section

6 Policy acquiring surrendered value not to lapse sub section (2) — Sub-section (*2*) provides that where a policy of life insurance has acquired a surrender value it must not lapse on account of non payment of further premiums but it has to be kept alive up to the extent of the paid up sum insured This sub-section also lays down that this paid-up sum insured must include in

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1 *Hunbraj Tolomal* v *Luxmi Insurance Co Ltd* 1941 Sind 209

2 *Mckenna* v *City Life Insurance Co* (1919) 2 K B 191

3 *Ann parnabhai Ghate* v *Hindusthan Co-operative Insurance Society Ltd* I L R (1945) Nag 253 1943 Nag 9

4 *D I I Satyanarayana* v *National Insurance Co Ltd* 1947 Mad 51

5 See *Prudential Insurance Co Ltd* v *Inland Revenue Commissioners* (1904) 2 K B 658 but in the same case it has been observed that the principle is correct as regards the early years of the insurance but it will be a bad bargain if the assured lives beyond the average period of life upon which the premiums are based *per* Channel J at p 665

full all subsisting reversionary bonuses that have already attached to the policy Moreover, in the case of a policy on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, this paid-up sum insured must not be less than the amount bearing to the total sum insured by the policy exclusive of bonuses in the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable After ascertaining this amount all subsisting reversionary bonuses that have already attached to the policy has to be added to the said amount Thus, where twenty-five years is the period fixed and premiums for a period of five years have been paid, the ratio will be 5 25, *i e* the paid-up sum insured will be one-fifth of the total sum insured Hence, where Rs 2 000 is the sum for which the relevant policy is taken out and premiums are to be paid for a period of 25 years, the paid up sum insured will be one fifth of Rs 2,000, *i e*, Rs 400 To this sum of Rs 400 must be included in full all subsisting reversionary bonuses that have already attached to the policy Thus if the bonuses are declared at Rs 10 per Rs 1,000, the paid up sum insured will amount to Rs 400 *plus* Rs 20=Rs 420 So policy has to be kept alive up to the extent of Rs 4 0 and it must not lapse by reason of the non-payment of further premiums even if there be any stipulation in the policy contrariwise In other words, this sub- ection says that a policy which has acquired a surrender value will automatically acquire a paid up sum insured or a paid up value on payment of further premiums being ceased thereon [1]

(*A*) *Bonus*—Under certain policy contracts amount payable under a policy is not necessarily restricted to the sum insured that is, the amount mentioned in it but insurers agree and many policies so provide that the sum insured will be increased by the addition of bonuses which are to accrue after the policy has been in force for a certain number of years or that the assured will have a share in the profits of the insurer's business This is generally done in certain classes of policies known as policies participating in profits But policies which are issued as without profits do not share in such profits and the amount payable is the fixed sum [2] The distribution of profit is usually in the discretion of the insurers [3]

7 Paid-up policy not to participate in any profits sub section (3) — Sub section (3) lays down that a policy kept alive to the extent of the paid-up sum insured shall not be entitled to participate in any profits declared distributable after the conversion of the policy into a paid up one The amount fixed at the date of conversion of the policy into a paid up one and calculated in the manner laid down in sub section (2) will be the amount which will be payable at the end of the period stipulated for payment During the interim period whatever profits may be declared and distributed shall not be available to paid up policies In other words, no bonuses will attach to any paid up policy But where there is a contract to the contrary whether such bonuses could be attached to a paid up policy or not, the answer to the question is not free from difficulty Bonus is determined out of the profits made by an insurer and it is distributed as profits Hence a contract providing for such a bonus to be attached to a paid up policy would be hit by the provisions of this sub- ection

8 Exceptions to the rule of automatic conversion to paid up policies sub-section (4) —Sub section (4) lays down the exceptions

1 See *Prudential Insurance Co Ltd* v *Inland Revenue Commissioners* (1904) 2 K B 658 cited *supra*

2 *Ibid*

3 *Barlow* v *Dickson* (1909) see also *British Equitable* v *Baily* (1906) A C 35

Again where a policy having acquired a surrender value after three years subsequent premiums were not paid and the policy was kept alive by applying the said value and subsequent premiums although not paid on due date but paid within the days of grace, the premiums paid were held effective as if paid before due date [1] But where a fixed period is stipulated in the policy during which it was kept alive in default of payment of premiums, the premiums paid after the said stipulated period but within the days of grace may be refused even though the policy has acquired a surrender value [2] Again, where it is stipulated in the policy that the surrender value will remain the property of the policy holder even if the policy lapses on account of non payment of premium, the insurer will not be heard to say that he applied the surrender value for keeping the policy alive by reference to the prospectus or rules of the company which were not referred to in the policy [3] But a stipulation in a loan bond where a policy holder took loan on the security of his policy that the insurer shall have the right to cancel the policy in default of payment of the loan and interest and to apply the surrender value to the repayment of the said loan, such stipulation was held to be illegal as being a clog on the equity of redemption [4] The principle upon which the surrender value is based is that the value of a policy usually increases according to the length of the period during which the policy has remained in force [5]

(*B*) *Duty of the insurer* —The duty of the insurer as envisaged in this section is that he must show the guaranteed surrender value of the policy (*i*) at the close of each year after the second year of its currency, or (*ii*) at the close of each period of three years throughout the currency of the policy

5 Compliance with the requirements of section, circumstances of Provisos (1), (2) and (3) to sub section (1) —The requirements as to (*i*) the addition of the surrender value of the bonus attaching to a policy at surrender, and (*ii*) the showing of guaranteed surrender value on it shall be deemed to have been complied with in case of (*i*) where the method of calculation of the guaranteed surrender value of the policy makes provision for the surrender value of the bonus attaching to the policy, and in case of (*ii*) where the insurer shows on the policy its guaranteed surrender value by means of a formula accepted in this behalf by the Controller

The third proviso to sub-section (1) lays down that the requirements as to the showing of guaranteed surrender value on the policy as laid down in sub section (1) shall not take effect until after the expiry of six months from 1st January 1942 which is the date appointed by the Central Government in this behalf *i e*, all life policies issued after 1st July, 1942 must show on them the guaranteed surrender values as laid down in the said sub-section

6 Policy acquiring surrendered value not to lapse sub section (2) — Sub-section (2) provides that where a policy of life insurance has acquired a surrender value it must not lapse on account of non payment of further premiums but it has to be kept alive up to the extent of the paid up sum insured This sub-section also lays down that this paid-up sum insured must include in

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1 *Huntroj Tolomal v Luxmi Insurance Co Ltd* 1941 Sind 209

2 *Mckenna v City Life Insurance Co* (1919) 2 K B 491

3 *Annapurnabhai Ghate v Hindusthan Co-operative Insurance Society Ltd* I L R (1943) Nag 253 : 1943 Nag 9

4 *D I Satyanarayana v National Insurance Co Ltd* 1947 Mad 51

5 See *Prudential Insurance Co Ltd v Inland Revenue Commissioners* (1904) 2 K B 658 but in the same case it has been observed that the principle is correct as regards the early years of the insurance but it will be a bad bargain if the assured lives beyond the average period of life upon which the premiums are based *per* Channel J at p 665

full all subsisting reversionary bonuses that have already attached to the policy Moreover, in the case of a policy on which the maximum number of annual premiums payable is fixed and the premiums are of uniform amount, this paid-up sum insured must not be less than the amount bearing to the total sum insured by the policy exclusive of bonuses in the same proportion as the total period for which premiums have already been paid bears to the maximum period for which premiums were originally payable After ascertaining this amount all subsisting reversionary bonuses that have already attached to the policy has to be added to the said amount Thus, where twenty-five years is the period fixed and premiums for a period of five years have been paid, the ratio will be 5 25, *i e* the paid-up sum insured will be one fifth of the total sum insured Hence, where Rs 2 000 is the sum for which the relevant policy is taken out and premiums are to be paid for a period of 25 years, the paid up sum insured will be one fifth of Rs 2,000, *i e*, Rs 400 To this sum of Rs 400 must be included in full all subsisting reversionary bonuses that have already attached to the policy Thus if the bonuses are declared at Rs 10 per Rs 1,000, the paid up sum insured will amount to Rs 400 *plus* Rs 20=Rs 420 So policy has to be kept alive up to the extent of Rs 4 0 and it must not lapse by reason of the non payment of further premiums even if there be any stipulation in the policy contrariwise In other words, this sub section says that a policy which has acquired a surrender value will automatically acquire a paid up sum insured or a paid up value on payment of further premiums being ceased thereon [1]

(*A*) *Bonus*—Under certain policy contracts amount payable under a policy is not necessarily restricted to the sum insured that is, the amount mentioned in it but insurers agree and many policies so provide that the sum insured will be increased by the addition of bonuses which are to accrue after the policy has been in force for a certain number of years or that the assured will have a share in the profits of the insurer's business This is generally done in certain classes of policies known as policies participating in profits But policies which are issued as without profits do not share in such profits and the amount payable is the fixed sum [2] The distribution of profit is usually in the discretion of the insurers [3]

7 **Paid-up policy not to participate in any profits sub section (3)** —Sub section (3) lays down that a policy kept alive to the extent of the paid-up sum insured shall not be entitled to participate in any profits declared distributable after the conversion of the policy into a paid up one The amount fixed at the date of conversion of the policy into a paid up one and calculated in the manner laid down in sub section (2) will be the amount which will be payable at the end of the period stipulated for payment During the interim period whatever profits may be declared and distributed shall not be available to paid up policies In other words, no bonuses will attach to any paid up policy But where there is a contract to the contrary whether such bonuses could be attached to a paid up policy or not, the answer to the question is not free from difficulty Bonus is determined out of the profits made by an insurer and it is distributed as profits Hence a contract providing for such a bonus to be attached to a paid up policy would be hit by the provisions of this sub-section

8 **Exceptions to the rule of automatic conversion to paid up policies sub-section (4)** —Sub section (4) lays down the exceptions where a

1 See *Prudential Insurance Co Ltd v Inland Revenue Commissioners* (1904) 2 K B 658 cited *supra*

2 *Ibid*

3 *Bartlett v Dickson* (1909) 25 T L R 585 see also *British Equitable Assurance Co Baily* (1906) A C 35 H L

policy even if it has acquired a surrender value could not be converted into a paid-up one on account of non payment of further premiums, *i.e.*, the rules stated in sub-sections (2) and (3) The exceptions are as follows

(*i*) Where the paid up sum insured or where it takes the form of an annuity, the amount falls below a certain limit Thus in the case of a policy issued by an insurer where the paid up sum insured is less than Rs 100 inclusive of any attached bonuses, or annuity is less than Rs 25 , and in the case of a policy issued by a provident society as defined in Part III where the paid up sum insured is less than Rs 50 inclusive of any attached bonus or annuity is less than Rs 25

(*ii*) Where the parties agree in writing to some other arrangement after default has occurred in the payment of premium The conditions for this exception are that the arrangement must be in writing and not oral and that such arrangement must be made after the default in payment of premium has occurred and not before the occurrence of any such default

(*iii*) Where under the terms of the contract the surrender value is automatically applied to keep the policies in force after its lapse through non payment of premium

The automatic application of surrender value to keep the policy alive is generally known as the non-forfeiture clause Several schemes are to be found in vogue amongst the insurers for this purpose By way of illustrations a few of them are noted below

(*a*) Surrender value less any amount of loan due to the company is applied to keep the policy in force for a period of one year but where the surrender value is insufficient so much of the amount as the said value will cover ,

(*b*) loans may be granted from year to year out of the surrender value in payment of premiums as they fall due at a certain rate of interest which is usually 6 per cent per annum , the advantage of this scheme is that the policy can be kept alive for a greater period because of the increase in surrender value of the policy in normal way ,

(*c*) surrender value less any amount of loan due on the policy is applied to keep the policy alive for so long as that value will permit without charging any interest but by this scheme the surrender value does not increase as in (*b*)

Notwithstanding the non-forfeiture regulations policies issued by the Life Insurance Corporation grant certain claims concession where any default is made in the payment of premium after at least three full years' premiums have been paid in respect of the policy concerned The scheme of claims concession is that in the event of the death of the life assured within six months from the due date of the first unpaid premium the policy moneys will be paid as if the policy had remained in full force but subject to deduction of (*i*) unpaid premiums with interest thereon up to the date of death on the same terms as for revival of the policy during such period and (*ii*) the unpaid premiums falling due before the next anniversary of the policy except in the case of policies effected under Fixed term (Marriage) Endowment and Educational Annuity plans

Life Insurance Corporation policies also grant surrender value which depends on the class of policy and the number of years it has been in force where premiums have been paid for at least two years The surrender value so granted is to the extent of one tenth of the number stipulated for in the policy, provided such one tenth exceeds one full year's premium But no surrender value is allowed in the case of policies effected under Two year Temporary Assurance Policy and the Immediate Annuity

Power of Central Government to make rules

114 (1) The Central Government may, subject to the condition of previous publication by notification in the official Gazette, make rules to carry out the purposes of this Act

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the qualifications to be possessed by actuaries ,

(*b*) the manner in which it shall be determined which of the transactions of an insurer are to be deemed for the purposes of this Act to be insurance business transacted in India ,

(*c*) the procedure to be followed by the Reserve Bank of India in dealing with deposits made in pursuance of this Act, including the receipt of custody of, withdrawal of, and payment of interest on securities lodged as such deposits, and their inspection and verification by the Controller ,

(*d*) the form referred to in clause (*d*) of sub-section (2) of section 16 ,

(*e*) the manner in which the prospectuses and tables referred to in sub section (1) of section 41 shall be published and the form in which they shall be drawn up ,

(*f*) the matters to be prescribed for the purposes of section 48 ,

(*g*) the manner in which licences to act as insurance agents may be applied for, issued or cancelled ,

(*h*) the contingencies other than those specified in clauses (*a*) to (*f*) of sub section (2) of section 65 on the happening of which money may be paid by provident societies ,

(*i*) the matters other than those specified in clauses (*a*) to (*o*) of sub section (1) of section 74 on which a provident society shall make rules ,

(*g*) the form of any account, return or register required by Part III and the manner in which such account, return or register shall be verified ,

(*h*) subject to the provisions of this Act the fees payable thereunder and the manner in which they are to be collected ,

(*l*) the conditions and the matters which may be prescribed under sub sections (5), (6), (10) and (12) of section 92 ,

(*ll*) the term of office of, and the allowances payable to members of the Advisory Committee constituted under section 101B, the procedure to be followed by and the quorum necessary for the transaction of business of, the committee and the manner of filling casual vacancies therein ,

(*m*) any other matter which is to be or may be prescribed

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be , so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule

(4) All rules made by a State Government under the provisions of section 24 of the Provident Insurance Societies Act, 1912, and in force at the commencement of this Act shall so far as not inconsistent with the provisions of Part III continue in force and have effect as if duly made under this section until they are replaced by rules made under this section

SYNOPSIS

1 *Legislative changes*
2 *Object, scope and applicability*
3 *Central Government's power, its nature and scope* (A) *Rules, interpretation of*
4 *Rule to be laid before each House of Parliament sub section* (3)
5 *Rules under the Provident Societies Act, 1912 to continue sub section* (4)

1 **Legislative changes**—Clause (*b*) of sub-section (2) was substituted by Act XIII of 1941 the word 'India occurring therein was substituted for the words 'the States by Act LXII of 1955 the word 'Controller' in clause (*c*) was substituted by Act XLVII of 1950 the words "applied for in clause (*g*) were inserted by Act XIII of 1941, the words and figures 'sub section (2) of

in clause (*h*) were inserted by Act XX of 1940, the word "and" occurring at the end of clause (*k*) was omitted by the said Act the figure and bracket "(6)" in clause (*l*) was inserted by Act XI of 1939, clause (*ll*) in sub-section (2) was inserted by the Amendment Act XI of 1961, clause (*m*) was inserted by Act XX of 1940 and the proviso to clause (*m*) was omitted by Act XI of 1961

Sub-section (3) of the section was substituted by the Amendment Act XI of 1961 The original sub-section (4) was re numbered sub-section (4) by Act XX of 1940 and the words "a State" in sub-section (4) was substituted by A O, 1950

2 **Object, scope and applicability** —The object of the section is to empower the Central Government to make rules with a view to carry out the purposes of the Act This section gives both general and particular powers with regard to which the Central Government can frame rules Sub section (1) confers general powers while sub-section (2) gives particular powers with regard to matters specified in clauses (*a*) to (*m*) of that sub-section These rules are to be made by notification previously published in the official Gazette Sub-section (3) enjoins a duty on the Central Government to place the rules before each House of Parliament while it is in session for a total period of thirty days and the validity of the rules will depend whether both Houses agree to approve them, if not, the rules will have no effect and shall be annulled but the annulment of any rule will not invalidate anything previously done in pursuance of the said rule Sub-section (4) makes the rules made by a State Government under section 24 of the Provident Societies Act, 1912 (V of 1912), enforceable as at the commencement of this Act which are not inconsistent with any of the provisions of Part III until they are replaced by rules made under this section Similar powers are also conferred on the Central Government under the Companies Act, 1956, to make rules for all or any of the matters which by that Act are to be made or may be prescribed and generally to carry out the purposes of that Act [1]

This section has been made applicable to the Life Insurance Corporation of India

3 **Central Government's power, its nature and scope** —The power that has been conferred on the Central Government by sub sections (1) and (2) is to make rules which may be either general or may be with regard to particular matters specified Sub-section (1) contemplates power to make rules generally, *i e* with relation to all or any of the matters which by this Act the rules are to be, or may be made or prescribed by the Central Government, while sub-section (2) contemplates to make rules particularly with relation to the matters specified in clauses (*a*) to (*m*) therein, *i e* the rules to be framed by the Central Government should only concern those matters But in both cases the main object of the rules must be to carry out the purposes of this Act Where the rule so framed does not satisfy this test of carrying out the purposes of this Act but for some other purposes it will not be a rule framed in accordance with this section and must be invalid in law

(*A*) *Rules, interpretation of* —Rules must be clear and definite and must be free from ambiguity They must not be in excess of the statutory power authorising them nor repugnant to that statute or to the general

1 *See* S 642 of the Companies Act 1956 (I of 1956)

principles of law [1] General rules and forms made under the authority of an Act which enacted that they should have the same force as if they have been includ d in it have been referred to for the purpose of assisting in the interpretation of the Act [2] If a statutory instrument (rule) contains words identical to those used in the Act under which it is made must be construed in the same way as they are construed in the Act [3] Even the rule can be brought into play to construe the language of the Act where it is ambiguous and difficulty arises in its construction [4]

In order to justify a rule, the rule itself need not show on its face under what particular section of the Act it is being made So long as the rule can be justified under the rule-making power the non recital of the fact that it has been so made will not make the rule bad or invalid [5]

4 Rule to be laid before each House of Parliament sub-section (3) —Sub-section (3) lays down the procedure which must be observed for the validity of the rule framed under this section This sub-section is similar to the provisions contained in sub section (3) of section 642 of the Companies Act, 1956 The Select Committee on the Companies Amendment Bill adopted a new formula on subordinate Legislation as regards laying of notification before the Houses of Parliament The same formula is also adopted in this Act

This sub-section lays down that every rule made under this section must be laid before each House of Parliament while it is in session for a total period of 30 days either in one or two successive sessions and where both Houses agree to modify the rule or that it should not be made, the rule shall have effect as modified or shall be nullified, as the case may be But such modification or nullification shall not invalidate any act previously done under that rule Any conflict between a rule and a section of the Act must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with If a reconciliation is impossible, the subordinate provi sion must give way and probably the rule would be treated as subordinate to the section [6]

5 Rules under the Provident Insurance Societies Act, 1912 to continue , sub-section (4) —Sub-section (4) lays down two conditions for the applicability and continuity of the rules made by a State Government under the provisions of section 24 of the Provident Insurance Societies Act, 1912 (V of 1912) to a provident society as defined in Part III of the Act The conditions are (i) that such rules must not be inconsistent with the provisions of Part III of this Act and (ii) unless they are replaced by rules made under this section Rules under this section with regard to provident societies have been made under the Insurance Rules, 1939, regarding transaction of bond investment business, rules of provident societies, registers to be maintained by them forms of accounts and statements, actuarial reports and signatures to returns furnished by them and hence the rules under Act V of 1912 are replaced by the said Rules [7]

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1 Maxwell : Interpretation of Statutes pp 302 303
Ibid p 57
3 *Fotis v Reid* (1913) A C 1 H L *see* also *Pratt v Chambers* (1884) 14 Q B D 479
4 Craies Statute Law p 146.
5 *Brij abra Kunwar v Union of India* 65 C W N 670 : 1961 Cal 217
6 Maxwell Interpretation of Statutes P 54 *see* also *Hicks v D P P* (1947) A C 362 H L approving *Williams v Norris* (1909) 1 K B 57
7 *See* Rules 18 to 22 of the Insurance Rules 1939

Alteration of forms

115 The Central Government may, on the application or with the consent of an insurer not being a company, alter the forms contained in the Schedules as respect that insurer, for the purposes of adapting them to the circumstances of that insurer

Provided that nothing done under this section shall exempt the insurer from supplying all information required under this Act so far it is possible for the insurer to do so

Notes

This section confers discretionary power on the Central Government to alter any forms contained in the Schedule of the Act when an application is made to it for that purpose The alteration contemplated under this section is only with a view to adapt those forms to the circumstances of that insurer But such alteration of the forms in the Schedule cannot be made in respect of an insurer incorporated as a company (See the power of the Central Government to alter Schedules, Tables, Forms, etc , as contained in section 641 of the Companies Act, 1956)

Power to exempt from certain requirements

116 (1) The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in any country or State outside India from any of the provisions of this Act which may be specified in the notification either absolutely or subject to such conditions or modifications as may be specified in the notification

(2) This section shall apply in respect of provident societies as defined in Part III as it applies in respect of insurers

Notes

This section was re-numbered as sub-section (1) and the proviso and sub-section (2) was added by Act XIII of 1941 but the proviso was omitted by Act XLVII of 1950

The section confers discretionary power on the Central Government to exempt any foreign insurer or a provident society as defined in Part III from any of the provisions of the Act But such exemption must be made by notification in the official Gazette and not otherwise Such exemption may either be absolute or be saddled with conditions or modifications [1]

Summary of returns to be published

116A. The Central Government shall every year cause to be published, in such manner as it may direct, a summary of the accounts, balance-sheets, statements referred to in sub section (2) of section 10 or the returns, abstracts and other returns under this Act or purporting to be under this Act which have been furnished in pursuance of the provisions of this Act to the Controller during

1 *See* also S 62, *supra*

the year preceding the year of publication, and may append to such summary any note of the Controller or of the Central Government and any correspondence

Provided that nothing in this section shall require the publication of the statements referred to in sub-section (1) of section 28 or section 28A, or the statements referred to in sub-section (2) of section 31B or section 40B.

Notes

This section was added by Act XLVII of 1950

The section enjoins a duty on the Central Government to cause to be published every year a summary of (*i*) the accounts, (*ii*) balance sheets, (*iii*) life insurance fund, or (*iv*) returns abstracts or other returns under the Act or purporting to be under the Act and furnished to the Controller during the year preceding the year of publication In such summary to be published may be appended any note of the Controller or of the Central Government and any correspondence The manner in which the summary of those accounts and/or reports and abstracts has to be published has to be directed by the Central Government The statements which have been exempted from publication are—

(*i*) of assets held invested in Government securities or other approved securities ,

(*ii*) of investments made out of the controlled fund ,

(*iii*) of showing the remuneration paid, whether by way of commission or otherwise to any person in case where such remuneration exceeds the sum of Rs 5 000 , or

(*iv*) of premiums currently used by the insurer transacting life insurance business in India in regard to new business in respect of mortality, rate of interest expenses and bonus loading

The section has been made applicable to the Life Insurance Corporation of India

Saving of provisions of Indian Companies Act 1913

117 Nothing in this Act shall affect the liability of an insurer being a company or a provident society as defined in Part III being company to comply with the provisions of the Indian Companies Act, 1913, in matters not otherwise specifically provided for by this Act

Notes

The words "or a provident society as defined in Part III being company" occurring in the section were inserted by Act XIII of 1941 This section lays down that an insurer or a provident society defined in Part III incorporated under the Companies Act will have its liability to comply with the requirements of the said Act where those or any of those provisions have or has not specifically provided for by this Act Thus an insurance company becoming liable to penalties for non-compliance with the provisions of the Companies Act must be governed by the latter Act when the Insurance Act did not specifi

cally provide for it [1] But where the insurance company's or the provident society s acts or omissions may come within the mischief of both the Acts it would be proceeded against under the Insurance Act and the matters strictly coming under the Companies Act should be dealt with by that Act [2]

Section 616 of the Companies Act, 1956, *inter alia* says, "The provisions of this Act shall apply (*a*) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938), Thus, it "makes it clear that insurance and other companies which are governed by special Acts will continue to be governed by those Acts and that such companies will be governed by the provisions of the Bill (since enacted as Act I of 1956) in so far as those provisions are not inconsistent with those contained in the special Acts governing those companies "[3] The necessary consequence then is that all the provisions of the Companies Act, 1956, will apply to a company although it is governed by a special Act when the matters are not specially provided in the special Act and hence there is no escape from the obligations imposed on the companies by the Companies Act, 1956

Section 616 of the Companies Act, 1956, corresponds to section 257 of the Indian Companies Act, 1913 and by virtue of section 8 of the General Clauses Act (X of 1897) the reference to the Indian Companies Act, 1913, will be taken as reference to the Companies Act, 1956, which has repealed the former

In *Shyamapada* v *Controller of Insurance*[4] where on account of transfer by one insurance company of its business to another insurance company under express powers given by its Memorandum of Association it was contended that the result of the transfer was a virtual winding up and that it was not one of the corporate objects of a company to wind it up and it was further contended that the winding up could be effected only under the provisions of the Companies Act, the Supreme Court in repelling the said contentions and referring to this section has observed "Now section 117 of the Insurance Act provides that nothing in that Act would affect the liability of an insurance company to comply with the provisions of the Indian Companies Act in matters not otherwise specifically provided for by it Section 36 of the Insurance Act which has for the present purpose to be read with section 35 of that Act, makes certain specific provisions which, override the provisions of the Companies Act" [5] Companies carrying on certain types of insurance business within the United Kingdom are, in addition to the provisions of the Companies Act, 1948, governed by the Insurance Companies Act, 1958 (which repealed and consolidated a series of Acts known as the Assurance Companies Acts, 1909-1946) [5]

118 Nothing in this Act shall apply—

Exemptions

(*a*) to any trade union registered under the Indian Trade Unions Act, 1926, or

(*b*) to any provident fund to which the provisions of the Provident Funds Act, 1925, apply, or

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1 *Ajit P Chatterjee Managing Director Eastern National Insurance Co Ltd* v *Emperor* 37 C W N 1153

2 *Surendra Nath* v *Kali Pada* I L R (1940) 1 Cal 575 44 C W N 494 1940 Cal 232

3 Notes on clause 574 of the Companies Bill

4 1962 S C 1355 at p 1357 *per* Sarkar J, *Bisrood* v *Henderson s Transvaal Estates Ltd* (1908) 1 Ch 743 held not applicable

5 *See* Palmer s Company Law p, 790

(*c*) if the Central Government so orders in any case, and to such extent or subject to such conditions or modifications as may be specified in the order, to any insurance business carried on by the Central Government or a State Government or a Government company as defined in section 617 of the Companies Act, 1956 , or

(*d*) if the Controller so orders in any case, and to such extent or subject to such conditions or modifications as may be specified in the order, to—

(*i*) any approved superannuation fund as defined in clause (*a*) of section 58N of the Income Tax Act, 1922 , or

(*ii*) any fund in existence and officially recognised by the Central Government before the 27th day of January, 1937, maintained by or on behalf of Government servants or Government pensioners for the mutual benefit of contributors to the fund and of their dependants , or

(*iii*) any mutual or provident insurance society composed wholly of Government servants or of railway servants which has been exempted from any or all of the provisions of Provident Insurance Societies Act, 1912

Notes

This section was substituted by Act XXXV of 1957 with effect from 1st September, 1957

The section lays down three varieties of exemptions from the operation of the provisions of this Act *Firstly*, it exempts (*a*) any trade union registered under the Indian Trade Unions Act, 1925 and (*b*) any provident fund to which the provisions of the Provident Funds Act, 1925, apply , *secondly* it confers powes on the Central Government either wholly or partially and subject to such conditions and modifications as it may specify in its order of exemption to exempt any insurance business carried on by (*a*) the Central Government, or (*b*) a State Government, or (*c*) a Government company as defined in section 617 of the Companies Act, 1956 , *thirdly* and *lastly* it confers power on the Controller either wholly or partially and subject to such conditions or modifications as he may specifiy in his order to exempt (*a*) any approved superannuation fund as defined in clause (*a*) of section 53N of the Indian Income Tax Act, 1922, corresponding to section 2 (*b*) of the Income Tax Act 1961 (Act XLIII of 1961), (*b*) any existing and officially recognised fund since before the 27th day of January, 1937, by the Central Government and maintained by or on behalf of the Government servants or Government pensioners for the mutual benefit of contributors to the funds and of their dependants or (*c*) any mutual or provident insurance society composed wholly of Government or railway servants and exempted from any or all of the provisions of the Provident Insurance Societies Act, 1912.

"Government company", definition of—For the purposes of the Companies Act, 1956, a Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined [1]

"Approved superannuation fund", definition of—It means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part B of the Fourth Schedule of the Income Tax Act, 1961 [2]

"Trade union", definition of—The expression means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions but without affecting (i) any agreement between partners as to their own business, (ii) any agreement between an employer or those employed by him as to such employment, or (iii) any agreement in consideration of the sale of the goodwill of a business or instruction in any profession, trade or handicraft.[3]

"Provident fund", definition of—It is a fund in which the subscriptions or deposits of any class or classes of employees are received and held on their individual accounts and would only cover funds organised by the employer for the benefit of the employees, and must be constituted by the authority of the Government [4]

Inspection and supply of copies of published prospectus

119 Any person may on payment of a fee of five rupees inspect the documents filed by an insurer with the Controller under clause (*f*) of sub-section (2) of section 3, and may obtain a copy of any such document or part thereof on payment in advance, at the prescribed rate for the making of the copy

Notes

This section was substituted by Act XIII of 1941 The section gives an opportunity to any person to inspect published prospectus, standard policy forms and statements of assured rates, advantages, terms and conditions to be offered in connection with insurance policies on payment of a fee of Rs 5 He can also obtain a copy of those documents or part thereof on payment in advance of Rs 2 for each foolscap page or part of a page of the copy, it being prepared with reasonable margin and spacing [5]

"Prospectus", as defined in the Companies Act 1956, means any document described or issued as a prospectus and includes any prospectus, notice, circular, advertisement or other document inviting offers from the

1 S 617 of the said Act
2. *See* S 2 (6) of the said Act
3 *See* S 2 (h) Trade Unions Act XVI of 1926
4 *See* S 2 (c) (d) and (e) of the Provident Funds Act, 1925 and *see* also *Soma Bai* v *Chellam* 1939 Mad 485, *Ahmad Hussain Khan* v *Bhagat Bali Ram* 1941 Lah 168 *Heera* v *Commissioner of Income tax* 1937 Lah 915
5 R 24 (5), Insurance Rules,

public for the subscription or purchase of any shares in, or debentures of, a body corporate [1] Regarding incidents of a prospectus see Part III of Chapter I of the said Act This section shall apply to the Life Insurance Corporation of India

Determination of market value of securities deposited under this Act

120. The market value on the day of deposit of securities deposited in pursuance of any of the provisions of this Act with the Reserve Bank of India shall be determined by the Reserved Bank of India whose decision shall be final

Notes

This section confers power on the Reserve Bank of India to determine the market value of any securities as at date when such securities are deposited with such bank as required under the provisions of this Act What the Reserve Bank of India would decide with regard to the market value has been made final and none can challenge the said value so determined

121 [*Repealed by the Repealing and Amending Act XXXVI of* 1957]

122 [*Repealed by the Repealing and Amending Act XXXVI of* 1957]

123 [*Repealed by the Repealing and Amending Act XXXVI of* 1957]

THE FIRST SCHEDULE
THE SECOND SCHEDULE
THE THIRD SCHEDULE
THE FOURTH SCHEDULE
THE FIFTH SCHEDULE
THE SIXTH SCHEDULE
THE SEVENTH SCHEDULE

1 S 2 (36) Companies Act, 1956

THE FIRST SCHEDULE

(*See* section 11)

Regulations and Form for the preparation of balance-sheet

PART I

Regulations

1 The balance-sheet required to be prepared in respect of every class of business carried on by an insurer is in the form in which it is set out in Part II of this Schedule (Form A), appropriate to a case where the insurer maintains a separate fund in respect of life insurance business

2 The balance-sheet of life insurance business shall be prepared as a separate document The balance-sheet of any class of business may be prepared as a separate document instead of being incorporated by the addition of columns and headings in the general balance sheet, but the totals of each such separate balance-sheet (showing the total assets of the class of business, the balance at the credit of the life insurance fund or other separate fund or account, the amount of shareholders' undivided profits, and outstanding liabilities) must in any case be incorporated in the general balance-sheet

3 If any combined balance-sheet is for any purpose issued by an insurer, it shall be in accordance with the Form set out in this Schedule, and there shall not be included among the assets shown in any such combined balance sheet any amount in respect of any holding in or advance to any insurer whose assets and liabilities have been incorporated therein Every combined balance-sheet must show clearly on the face thereof that it is a combined balance-sheet and must set out fully the name of every insurer whose assets and liabilities have been incorporated therein , if the assets and liabilities of any person not being an insurer are included in a combined balance-sheet the fact must be stated therein

4 Where any guarantee has been given by an insurer (otherwise than in the ordinary course of re-insurance business) in respect of the policies of any other insurer, the balance-sheet of the insurer by whom the guarantee was given must show clearly the name of every insurer whose policies have been so guaranteed and the extent of the guarantee

Provided that this regulation shall not apply where a combined balance-sheet is issued incorporating the assets and liabilities of the insurer whose policies are guaranteed

5 Where any part of the assets of an insurer is deposited in any place outside India as security for the owners of policies issued in that place, the balance sheet shall state that part of the assets has been so deposited, and, if any such part forms part of the life insurance fund, shall show the amount thereof and the place where it is deposited Where any combined balance-sheet is issued by an insurer for any purpose, the information required by this regulation shall be shown in the aggregate in respect of all the insurers whose assets and liabilities have been incorporated in the balance-sheet

6 There shall be appended to the balance-sheet a statement in Form AA as set out in Part II of this Schedule showing the market value and the book value of the assets in India

7 Every balance-sheet shall contain the following certificates, namely,—

(a) a certificate signed by the same persons as are required by this Act to sign the balance-sheet explaining how the values as shown in the balance-sheet of the Investments in stocks and shares have been arrived at and how the market value thereof has been ascertained for the purpose of comparison with the values so shown ,

(b) a certificate signed by the same persons as are required by this Act to sign the balance-sheet and signed also, so far as respects the value of any items shown in the balance-sheet under the heading of "Reversions and Life Interests", by an actuary, certifying that the values of all assets have been reviewed as at the date of the balance-sheet, and that in their belief the assets set forth in the balance-sheet are shown in the aggregate at amounts not exceeding their realisable or market value under the several headings—"Loans", "Reversions and Life Interests", "Investments', "Agents' Balances ', 'Outstanding Premiums", "Interest, Dividends and Rents outstanding" "Interest Dividends and Rents accruing but not due" "Amounts due from other Persons or Bodies carrying on Insurance Business", "Sundry Debtors", 'Bills Receivable", "Cash" and the several items specified under "Other Accounts"

Provided that if the persons signing the certificate are unable to certify that the assets set forth in the balance sheet are so shown as aforesaid a full explanation of the bases upon which the values shown in the balance-sheet have been assessed shall be given in the certificate ,

(c) where the balance-sheet relates either wholly or in part to life insurance business a certificate signed by the same persons as are required by this Act to sign the balance-sheet and by the auditor certifying that no part of the assets of the life insurance fund has been directly or indirectly applied in contravention of the provisions of this Act relating to the application and investment of life insurance funds , and

(d) certificates signed by the auditor (which shall be in addition to any other certificate or report which he is required by law to give with respect to the balance-sheet) certifying—

(i) that he has verified the cash balances and the securities relating to the insurer's loans, reversions and life interests, and investments,

(ii) to what extent, if any, he has verified the investments and transactions relating to any trusts undertaken by the insurer as trustee, and

(iii) in the case of a combined balance-sheet, that he has audited the balance-sheet and accounts of every insurer whose assets and liabilities are incorporated therein, or that any such balance-sheet and accounts which have not been audited by him, have been certified by independent auditors The said certificate shall contain a reference to such reservations, if any, as may have been made by any auditor upon any report or certificate given by him with respect to the balance sheet and accounts of any insurer whose assets and liabilities are incorporated in the combined balance-sheet.

8 If the values shown in the balance sheet in respect of "Holdings in Subsidiary Companies" or "House property (i) in India, (ii) out of India" have been increased since the last previous balance-sheet, the certificate required by paragraph (6) of the last foregoing regulation shall state the amount of every increase not solely due to the cost of subsequent additions or, as respects holdings in controlled companies, to increased profits, and shall contain an explanation of the reason therefor

9 For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely,—

(a) "combined balance-sheet" includes any combined statement made by an insurer of assets and liabilities in the form of a balance-sheet which includes the assets and liabilities of any other insurer, and

(b) "market value" means as respects any assets the market value thereof as ascertained from published market quotations, or, if there be no such value, its fair value as between a willing buyer and a willing seller.

PART II

FORMS

Form of Balance sheet

Balance sheet of 19

	Life and annuity business (1) Rs P	Other class of business (2)* Rs P	Total Rs P
Shareholder's capital (each class to be stated separately)			
Authorised shares of Rs each Rs			
Subscribed shares of Rs each Rs			
Called up shares of Rs each Rs			
Less unpaid calls Rs			
Reserve or Contingency Accounts			
Investment Reserve Account			
Profit and Loss Appropriation Balance of Account			
Life Insurance Funds and Accounts			
(i) Business in India			
(ii) Business outside India			
Fire Insurance Business Account			
Loans			
On mortgages of property within India			
On mortgages of property outside India			
On security of municipal and other public rates			
On stocks and shares			
On Insurer's policies within their surrender value			
To Subsidiary Companies (other than Reversionary) (*f*)			
To personal security			
Reversionary Companies (other than Subsidiary Companies) (*f*)			
Loans on Reversions and Life Interests purchased			
Reversions and Life Interests purchased			
Debentures and Debenture stocks of Subsidiary Companies (*f*)			
Debentures and Debenture stocks of Reversionary Companies (*f*)			

Marine Insurance Business Account				*Ordinary stocks and shares of Subsidiary Reversionary Companies (f)*			
Miscellaneous Insurance Business Account (*m*)				Loans to Subsidiary Reversionary Companies (*f*)			
Other accounts if any (to be specified) (*l*)				Investments			
Pension or Superannuation Accounts (*b*)				Deposit with Reserve Bank of India (securities to be specified)			
Debenture stock per cent				India Government Securities			
Loans and Advances (*e*)				State Government Securities			
Bills payable (*e*)				British, British Colonial and British Dominion Government Securities			
Estimated Liability in respect of outstanding claims, whether due or intimated (*d*)				Foreign Government Securities			
Annuities due and unpaid				Indian Municipal Securities			
Outstanding Dividends				British and Colonial Securities Foreign Securities.			
Amounts due to other persons or bodies carrying on Insurance business (*e*)				Bonds, Debentures, Stocks and other securities whereon interest is guaranteed by the India Government or a State Government			
Sundry creditors (including outstanding and accruing expenses and taxes) (*e*)				Bonds, Debentures, Stocks and other securities whereon interest is guaranteed by the British or any Colonial Government			
Other sums owing by the insurer (particulars to be given) (*e*)				Bonds, Debentures, Stocks and other securities whereon interest is guaranteed by any Foreign Government			
Contingent liabilities (to be specified) (*e*)				Debentures of any railway in India			
Rs ———							

PART II

FORMS

Form of Balance sheet

Balance sheet of 19

	Life and annuity business (1)	Other class of business (2)*	Total		Life and annuity business (1)	Other class of business (2)*	Total
	Rs P	Rs P	Rs P		Rs P	Rs P	Rs P
Shareholder s capital (each class to be stated separately) Authorised shares of Rs each Rs				Loans On mortgages of property within India On mortgages of property outside India On security of municipal and other public rates On stocks and shares On Insurer's policies within their surrender value On personal security To Subsidiary Companies (other than Reversionary) (*f*) Reversions and Life Interests purchased Loans on Reversions and Life interests Debentures and Debenture stocks of Subsidiary Reversionary Companies (*f*)			
Subscribed shares of Rs each Rs							
Called up shares of Rs each Rs							
Less unpaid calls Rs							
Reserve or Contingency Accounts (*a*)							
Investment Reserve Account							
Profit and Loss Appropriation Balance Account							
Balance of Funds and Accounts Life Insurance Fund— (i) Business in India (ii) Business outside India							
Fire Insurance Business Account							

Marine Insurance Business Account :				Ordinary stocks and shares of Subsidiary Reversionary Companies (*f*)			
Miscellaneous Insurance Business Account (*m*)				Loans to Subsidiary Reversionary Companies (*f*)			
Other accounts if any (to be specified) (*l*)				Investments			
Pension or Superannuation Accounts (*b*)				Deposit with Reserve Bank of India (securities to be specified)			
Debenture stock per cent				India Government Securities			
Loans and Advances (*e*)				State Government Securities			
Bills payable (*e*)				British, British Colonial and British Dominion Government Securities			
Estimated Liability in respect of outstanding claims, whether due or intimated (*d*)				Foreign Government Securities			
Annuities due and unpaid				Indian Municipal Securities			
Outstanding Dividends				British and Colonial Securities Foreign Securities.			
Amounts due to other persons or bodies carrying on Insurance business (*e*)				Bonds Debentures, Stocks and other securities whereon interest is guaranteed by the India Government or a State Government			
Sundry creditors (including outstanding and accruing expenses and taxes) (*e*)				Bonds, Debentures, Stocks and other securities whereon interest is guaranteed by the British or any Colonial Government			
Other sums owing by the insurer (particulars to be given) (*e*)				Bonds, Debentures, Stocks and other securities whereon interest is guaranteed by any Foreign Government			
Contingent liabilities (to be specified) (*e*)				Debentures of any railway in India			
Rs ———							

FORM A—*contd.*

	Life and annuity business (1)	Other class of business (2)*	Total		Life and annuity business (1)	Other class of business (2)*	Total
	Rs P	Rs P	Rs P		Rs P	Rs P	Rs P
				Debentures of any railway out of India			
				Preference or guaranteed shares of any railway in India			
				Preference or guaranteed shares of any railway out of India			
				Railway Ordinary stocks—			
				(i) in India			
				(ii) out of India			
				Other Debentures and Debenture stock of Companies incorporated—			
				(i) in India			
				(ii) out of India			
				Other guaranteed and preference stocks and shares of Companies incorporated—			
				(i) in India			
				(ii) out of India			
				Other ordinary stocks and shares of Companies incorporated—			
				(i) in India			
				(ii) out of India			
				Holdings in Subsidiary Companies (*f*)			

				House property— (*i*) in India (*ii*) out of India				
				Freehold and Leasehold ground rents and rent charges				
				Agent's Balances				
				Outstanding premiums (2) (*d*)				
				Interest, Dividends and Rents outstanding (*d*)				
				Interest, Dividends and Rents accruing but not due (*d*)				
				Amounts due from other persons or bodies carrying on Insurance business (*h*).				
				Sundry debtors (*i*)				
				Bills Receivable				
				Cash				
				At Bankers on Deposit Account				
				At Bankers on Current Account and in hand				
				All Call and Short Notice (*j*)				
				Other Accounts (to be specified) (*k*).				

*Assets and Liabilities, Shareholder's Capital and Reserves, not allocated to any class of busine s specified in column (1) must be shown in column (2).

Notes

(*a*) The Reserves or Contingency Accounts must be separately stated

(*b*) If the insurer has not full and unrestricted control of the assets constituting the Pension or Superannuation Accounts, either those accounts and the assets and liabilities relating thereto must be omitted from the balance sheet or the assets of which the insurer has not such control must be clearly indicated on the face of the balance-sheet

(*c*) If the insurer has deposited security as cover in respect of any of these items, the amount and nature of the securities so deposited must be clearly indicated on the face of the balance-sheet

(*d*) These items are or have been included in the corresponding items in the Revenue or Profit and Loss Account Outstanding and accruing interest, dividends and rents must be shown after deduction of income tax or the income-tax must be provided for amongst the liabilities on the other side of the balance sheet

(*e*) Such items as amount of liability in respect of bills discounted, uncalled capital of subsidiary companies, uncalled capital of other investments, etc, must either be shown in their several categories under the heading "Contingent Liabilities" or the appropriate items on the assets side must be set out in such details as will clearly indicate the amount of the uncalled capital

(*f*) As respects life and annuity business full particulars of holdings in and loans to subsidiary companies must be stated giving the name of each company, the number and description of each class of shares held the amount paid up thereon, and the value at which the holdings in each company stand in the balance-sheet

(*g*) Either this item must be shown net or the commission must be provided for amongst the liabilities on the other side of the balance sheet

(*h*) The aggregate amount owned by a subsidiary company or subsidiary companies is to be shown separately from all other assets and the aggregate amount owing to a subsidiary company or subsidiary companies is to be shown separately from all other liabilities

(*i*) Amounts due from directors and officers must be shown separately

(*j*) No amount must be entered under this heading unless fully secured If not fully secured, the amount must be included under the heading "Sundry Debtors

(*k*) Under this heading must be included such items as the following, which must be shown under separate headings suitably described Office furniture goodwill, preliminary, formation and organisation expenses, development expenditure account, discount on debentures issued other expenditure carried forward to be written off in future years balance being loss on Profit and Loss Appropriation Accounts, etc The amounts included in the balance-sheet must not be in excess of cost

(*l*) Under the head "Other accounts if any (to be specified)" on the left hand side fines realised from the staff and their contribution towards the provident fund if any should be shown under separate sub heads

(*m*) Where the insurer is required to maintain a separate account in respect of any sub-class of miscellaneous insurance business this heading is to be split up accordingly

FORM AA

Classified Summary of the Assets in India of the Company on 19

Class of Asset	Book value as per (*a*) below	Market value as per (*d*) below	Remarks as per (*e*) below
	Rs	Rs	
(1) Government of India Securities			
(2) Indian State Government Securities			
(3) Indian Municipal, Port and Improvement Trust Securities including Debentures			
(4) Debentures of Indian Railways			
(5) Guaranteed and Preference Shares of Indian Railways			
(6) Annuities of Indian Railways			
(7) Ordinary shares of Railways in India			
(8) Other Debentures of concerns in India			
(9) Other Guaranteed and Preference Shares of concerns in India			
(10) Other Ordinary shares of concerns in India			
(11) Loans on the Company's policies effected in India and within their surrender value			
(12) Loans on mortgage of property in India			
(13) Loans on Personal Security to persons domiciled and resident in India			
(14) Other loans granted in India (particulars to be stated)			
(15) Land and House property in India			
(16) Cash on deposit in banks in India			
(17) Cash in hand and on current account in banks in India			
(18) Agents' balances and outstanding premiums			
(19) Interest, dividends and rents either outstanding or accrued but not due			
(20) Other assets in India (to be specified)			

FORM AA—*contd*

The statement shall show—

(*a*) the value for which credit is taken in the balance-sheet for each of the above mentioned classes of assets,

(*b*) the market value of such of the above mentioned classes of assets as has been ascertained from published quotations after deduction of accrued interest included in market prices in those cases where accrued interest is included elsewhere in the balance sheet,

(*c*) how the value of such of the above-mentioned classes of assets as has been ascertained from published quotations has been arrived at, and

(*d*) the rates of exchange at which the values of the assets other than in rupee currency have been converted into rupees

The market value need not be shown separately, where they are not less than the book values and a certificate to that effect is appended to the statement

No amounts on account of any of the following items may be entered in the statement

Goodwill

Preliminary, formation, organisation or development expenses

Commission or discount on shares or debentures issued

Commuted commission

Expenditure carried forward to be written off in future years

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THE SECOND SCHEDULE

(*See section* 11)

Regulations and Forms for the preparation of Profit and Loss Accounts

PART I

Regulations

1 The items on the income side of the Profit and Loss Account and Profit and Loss Appropriation Account must relate to income whether actually received or not and the items on the expenditure side must relate to expenditure whether actually paid or not

2 Deductions from Interest, Dividends and Rents to be shown in respect of income tax must include all amounts in respect of Indian Central Income-tax whether or not it has been or is to be deducted at source or paid direct

3 The Interest Dividends and Rents *less* income tax thereon shown in the Revenue Accounts for any classes of business other than life insurance business including annuity business may if the insurer so desires, be included within the corresponding items in the Profit and Loss Account

PART II

Forms

FORM B

Form of Profit and Loss Account

Profit and Loss Account of for the year ended 19

	Rs P		Rs P
Indian Central Taxes on the Insurer's Profits (not applicable to any particular Fund or Account)		Interest, Dividends and Rents (not applicable to any particular Fund or Account) Rs	
		Less—Income tax thereon Rs	
Expenses of management (not applicable to any particular Fund or Account) [1]		Profits on realisation of Investments (not credited to Reserves or any particular Fund or Account)	
Loss on Realisation of Investments (not charged to reserves or any particular Fund or Account)		Appreciation of Investments (not credited to Reserves or any particular Fund or Account)	
Depreciation of Investments (not charged to Reserves or any particular Fund or Account)		Profits transferred from Revenue Accounts (details to be given)	
Loss transferred from Revenue Accounts (details to be given)		Transfer fees	
Other expenditure (to be specified)		Other income (to be specified)	
Balance for the year carried to Appropriation Account		Balance being loss for the year carried to Appropriation Account	

1 If any sum has been deducted from this item and entered on the assets side of the balance-sheet the account must be shown separately

FORM C

Form of Profit and Loss Appropriation Account

Profit and Loss Appropriation Account of for the year ended 19

	Rs P		Rs P
Balance being loss brought forward from last year		Balance brought forward from last year Rs	
Balance being loss for the year brought from Profit and Loss Account (as in Form B)		Less—Dividends since paid in respect of last year (to be specified and if "free of tax" to be so stated)[1] Rs	
Dividends paid during the year on account of the current year (to be specified and if "free of tax" to be so stated)			
Transfers to any particular Funds or Accounts (details to be given)		Balance for the year brought from Profit and Loss Account (as in Form B)	
Balence at end of the year as shown in the Balance-sheet		Balance being loss at end of the year as shown in the balance sheet	

THE THIRD SCHEDULE

(*See section* 11)

Regulations and Forms for the preparation of Revenue Account

PART I

Regulations

1 Form D is, as set out in Part II of this Schedule, appropriate for life insurance business but a separate revenue account must be prepared for every class or sub-class of business in respect of which the insurer is required to maintain a separate account

2 Form F is as set out in Part II of this Schedule, appropriate for fire insurance and for marine insurance business A separate revenue account in the same form must be prepared for miscellaneous insurance exclusive of any sub-class of such business in respect of which the insurer is required to maintain a separate account

For a sub-class of miscellaneous insurance in respect of which the insurer is required to maintain a separate account, Form D or Form F as set out in Part II of this Schedule may be used with such modifications as the Controller may authorise

1 This item may be on the other side of the account if preferred

3 If any combined revenue account is for any purpose issued by an insurer it must be in accordance with the forms specified in this Schedule and must clearly show on the face thereof that it is a combined revenue account, and must set out fully the name of every insurer required to make separate returns under this Act, whose revenue and expenditure have been included therein, if the revenue and expenditure of any person not being an insurer included in a combined revenue account, the fact must be stated thereon

4 The items on the income side of the revenue account must relate to income whether actually received or not, and the items on the expenditure side must relate to expenditure whether actually paid or not

5 Reinsurance premiums whether on business ceded or accepted, are to be brought into account gross (*i e*, before deducting commissions) under the head of premiums

6 As respects life insurance business the following statements shall be furnished to the Controller every year showing details provided for in a Form pertaining thereto —

(*A*) A statement in Form DD as set forth in Part II of this Schedule
(*B*) A statement in Form DDD as set forth in Part II of this Schedule
(*C*) A statement in Form DDDD as set forth in Part II of the Schedule

7 In addition to the revenue account, information shall be supplied of the gross premium written direct in India, that is, the premium income without taking into account premiums on reinsurances ceded or accepted, for every class or sub-class of business in respect of which the insurer is required to maintain a separate account

7A In addition to the revenue account, information shall also be supplied of the gross claims payable directly by the insurer in India (that is to say, the claims without taking into account claims on reinsurance ceded or accepted) separately for fire, marine and miscellaneous insurance business and the provisions of sections 20 and 116A shall not apply to any information so supplied

8 Any office premises which form part of the assets of a life insurance fund must be treated as an interest earning investment, and accordingly, in the revenue account for life insurance business a fair rent for the premises must be included under the heading 'Interest, Dividends and Rents" and in the revenue account of every class of business for which the premises are used proper charge for the use thereof must be included under the heading "Expenses of Management"

9 Where an insurer carries on the business of life insurance in conjunction with any other class of insurance business the expenses of management charged to the life insurance revenue account must not include more than a reasonable proportion of the common expenses and in particular, no such account must be charged with more than a fair sum for the use of any office premises having regard to the income from the various classes of business carried on and to the extent to which the premises are used for the purposes of each class of business

10 Deductions from Interest, Dividends and Rents in respect of income-tax must include all income tax charged on such income whether or not it has been or is to be deducted at source or paid direct, the income-tax to be shown as so deducted in the life insurance Revenue Account is Indian (Central) Indian (State), United Kingdom, Foreign and Dominion income-tax, but the income-tax to be shown as deducted in Revenue Accounts of other classes of business is Indian (Central) income-tax only

PART II

Forms

FORM D

Form of Revenue Account applicable to Life Insurance Business

Revenue Account of for the year ended 19
in respect of business

	Business within India	Business out of India (*a*)	Total
1 Claims under policies (including provision for claims due or intimated), less reinsurance—	Rs	Rs	Rs
By death			
By maturity			
Annuities less reinsurance			
Surrenders (including surrenders of bonus) less (reinsurances)			
Bonuses in cash, less reinsurances			
Bonuses in reduction of premimus less reinsurances			
Expenses of Management (*b*)—			
(*a*) Commission to Insurance agents less that on reinsurances			
(*b*) Allowances and commission [other than commission included in sub items (*a*) preceding]			
Balance of Fund at the beginning of the year			
Premiums less reinsurances			
(*i*) First year premiums, where the maximum premium paying period (*g*) is—			
two years seven years			
three years eight years			
four years nine years			
five years ten years			
six years eleven years			
twelve years or over (including throughout life)			
(*ii*) Renewal premiums			
(*iii*) Single premiums			

FORM D—*contd*

——	Business within India	Business out of India (*a*)	Total
	Rs	Rs	Rs
Consideration for annuities granted, less reinsurances (*c*)			
Interest, dividends and rents			
Less—Income-tax thereon (*d*)			
Registration Fees			
Other income (to be specified) (*e*)			
Loss transferred to Profit and Loss Account			
Transferred from Appropriation Account			
2 Salaries etc (other than to agents and those contained in item No 1)			
3 Travelling expenses			
4 Director's fees			
5 Auditor's fees			
6 Medical fees			
7 Law charges			
8 Advertisements			
9 Printing and Stationery			
10 Other expenses of management (accounts to be specified)			
11 Rents for offices belonging to and occupied by the insurer			
12 Rents of other offices occupied by the insurer			
Bad debts			
United Kingdom, Indian, Dominion and Foreign taxes			
Other expenditure (to be specified)			
Profit transferred to Profit and Loss Account			
Balance of Fund at the end of the year as shown in the balance-sheet			

Notes

(*a*) These columns apply only to business the premiums in respect of which are ordinarily paid outside India If any question arises whether any premiums are ordinarily paid outside India, the Controller of Insurance shall decide the question and his decision shall be final

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately Under this item the salary paid to the managing agent or managing director shall be shown separately from the total amount paid as salaries to the remaining staff

(*c*) All single premiums for annuities, whether immediate or deferred, must be included under this heading

(*d*) Indian, United Kingdom, Foreign and Dominion income tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income-tax recovered from the Revenue authorities in respect of expenses of management The separate heading on the other side of the account is for United Kingdom, Indian, Foreign and Dominion taxes, other than those shown under this item

(*e*) Under the head "Other Income" fines, if any, realised from the staff must be shown separately All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

(*f*) In the case of an insurer having his principal place of business outside India the expenses of management for business out of India and total business need not be split up into the several sub heads, if they are not so split up in his own country

(*g*) Where the maximum premiums paying period includes a fraction of a year such fraction shall be ignored for the purposes of this revenue account

FORM DD

Classified statement of life insurance policies of the Company, for the year ending 19

	New life insurance business in respect of which a premium has been paid in the year				Total life insurance business in force at end of the year		
	Number of policies	Sums insured and annuities per annum	Single premiums (including consideration for immediate or deferred annuities and all other premiums paid at the outset where no subsequent premium is payable)	Yearly renewal premium income	Number of policies	Sums insured with bonuses and annuities per annum	Premium income for which credit has been taken in the revenue account
Ordinary Policies		Rs	Rs	Rs		Rs	Rs
In India							
Out of India							
Total							
Annuity contracts, etc							
In India							
Out of India							
Total							
Group insurance policies							
In India							
Out of India							
Total							

The amount should be stated to the nearest rupee and after deduction of reinsurances

FORM DDD

Additions to and deductions from policies of the Company for the year ending 19

	Ordinary life insurance policies insuring money to be paid on death or survivance			Annuities	
	No	Sum assured	Reversionary bonus additions	No	Annuity per annum
		Rs	Rs		Rs
(1) Policies at beginning of year					
(2) New policies issued					
(3) Old policies revived					
(4) Old policies changed and increased					
(5) Bonus additions allotted					
Total					
Discontinued during year					
(6) By death					
(7) By survivance or the happening of the contingencies insured against other than death					
(8) By expiry of term under temporary insurances					
(9) By surrender of policy					
(10) By surrender of bonus					
(11) By forfeiture or lapse					
(12) By change and decrease					
(13) By being not taken up					
Total discontinued					
Total existing at end of year					

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted and all amounts stated shall be total gross amounts without taking into account reinsurances ceded or accepted

Insurers having their principal place of business in India shall give the information required in the form separately for business transacted in India but business transacted outside India and insurers having their principal place of business outside India will furnish information regarding business transacted in India only

FORM DDDD

Particulars of the policies forfeited or lapsed in the last year under review and of policies revived and reinstated for full benefits, classified according to the year in which they were issued

Years in which the policies were issued	Number of policies forfeited or lapsed	Sum insured under policies in column 2	Number of policies revived and reinstated for full benefits	Sum insured under policies in column 4
1	2	3	4	5
		Rs		Rs
Year ending 19 , being the year under review				
Year ending 19 , being the year previous to that under review				

And so on, the number of and sum insured under policies forfeited or lapsed in the last year under review being stated after classification according to each of the preceding years in which they were issued

A separate statement must be given in respect of each class of life insurance business for which a separate revenue account is submitted and all amounts stated shall be the total gross amounts without taking into account reinsurances ceded or accepted

Insurers having their principal place of business in India shall give the information required in the form separately for business transacted in India and business transacted outside India and insurers having their principal place of business outside India will furnish information regarding business transacted in India only

THE INSURANCE ACT

FORM F

[Sch III

Form of Revenue Account applicable to Fire Insurance Business, Marine Insurance Business and Miscellaneous Insurance Business

Revenue Account of Business for the year ended 19
in respect of

	Rs		Rs.
*Claims under Policies, less Reinsurances (a) (d)		Balance of Account at beginning of the year	
Paid during the year Rs		Reserved for Unexpired Risks	
Total estimated liability in respect of outstanding claims at end of the year whether due or intimated Rs		Additional Reserve (if any) Rs	
		*Premiums, less reinsurances (d)	
Total		Interest, Dividends and Rents Rs	
Less—Outstanding at end of previous year (b) Rs		Less—Income tax thereon Rs	
*Commission on direct business		Commission on reinsurances ceded	
Commission on reinsurances accepted			
*Expenses of Management (c)		*Other Income (to be specified) (e)	
*Bad Debts			
United Kingdom, Indian, Dominion and Foreign Taxes		Loss transferred to Profit and Loss Account	
*Other Expenditure (to be specified)		Transferred from Appropriation Account	
Profit transferred to Profit and Loss Account			
Balance of Account at the end of the year as shown in the Balance-sheet			
Reserve for Unexpired Risks being per cent of premium income of year Rs			
Additional Reserve (if any)			
Rs		Rs	

Notes

(a) This heading must include all expenses directly incurred in settling claims

(b) If in any year the claims actually paid and those still unpaid at the end of that year in respect of the previous year or years are in excess of the amount included in the previous year's Revenue Account as provision for

outstanding claims, then the amount of such excess must be shown in the Revenue Account

(c) If any sum has been deducted from this item and entered on the assets side of the balance-sheet the amount so deducted must be shown separately

(d) Where the account is furnished under the provisions of section 11 of the Insurance Act, 1938, separate figures for claims paid to claimants in India and claimants outside India and for premiums derived from business effected in India and effected outside India must be given

(e) All the amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India shall also be shown separately in the revenue account except such sums as properly appertain to the capital account

*Where the account is furnished under the provisions of clause (b) of sub-section (2) of section 16 of the Insurance Act, 1938, by an insurer to whom that section applies, separate figures for business within India and business out of India must be given against the items marked with an asterisk Against all other items the total amount for the business as a whole may be given

THE FOURTH SCHEDULE

(See section 13)

Regulations for the preparation of abstracts of Actuaries' reports and Requirements applicable to such abstracts

PART I

Regulations

1 Abstracts and Statements must be so arranged that the numbers and letter of paragraphs correspond with those of the paragraphs of Part II of this Schedule

2 In showing the proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums, in accordance with the requirements of paragraph 4 of Part II of this Schedule, no credit is to be taken for any adjustments made in order to secure that no policy is treated as an asset.

3 (1) The average rate of interest yielded in any year by the assets constituting a life insurance fund shall for the purposes of paragraph 5 of Part II of this Schedule, be calculated by dividing the amount of the year by the mean fund of the year, and for the purposes of any such calculation the interest of the year shall be taken to be the whole of the interest credited to the life insurance fund during the year after deduction of income-tax chargeable thereon (any refund of income-tax in respect of expenses of management during the year being taken into account), and the mean fund of the year shall be ascertained by adding a sum equal to one-half of the amount of the life insurance fund at the beginning of the year to a sum equal to the amount of that fund at the end of the year and deducting from the aggregate of the two sums an amount equal to one-half of the interest of the year

(2) For the purpose of the calculation aforesaid either

(*a*) all profits and income arising during the year from sums invested in reversions shall be included in the interest credited to th life insurance fund during the year, or

(*b*) such portion of the life insurance fund as is invested in the purchase of reversions, and the profits and income arising therefrom, shall be excluded from the calculation, but in that case a statement must be added to the information required under the said paragraph 5, showing in respect of the portion of the fund so excluded as aforesaid, the average rate of annual profit and income for which credit has been taken during the fiv years last preceding the valuation date, and explaining the manner in which the said average rate has been calculated

(3) The information given in accordance with the requirements of the said paragraph 5 shall show clearly by which of the methods hereinbefore in this regulation mentioned the sums invested in reversions and the profits and income arising therefrom have been dealt with

(4) Every abstract prepared in accordance with the requirements of Part II of this Schedule shall be signed by an actuary and shall contain a certificate as to the accuracy of the valuation made for the purposes thereof and of the valuation data

Provided that in the case of an abstract prepared on behalf of an insurer, if the actuary who signs the abstract is not a permanent officer of the insurer, the certificate as to the accuracy of the valuation data shall be given and signed by the principal officer of the insurer and the actuary shall include in the abstract a statement signed by him showing what precautions he has taken to ensure the accuracy of the data

5 For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely,—

"extra premium" means a charge for any risk not provided for in the minimum contract premium

inter valuation period" means as respect any valuation, the period to the valuation date of that valuation from the valuation date of the last preceding valuation in connection with which an abstract was prepared under this Act or under the enact ments repealed by this Act, or, in a case where no such valua tion has been made in respect of the class of business in ques tion from the date on which the insurer began to carry on that class of business,

"maturity date" means the fixed date on which any benefit will become payable either absolutely or contingently,

"net premiums" means as respects any valuation the premiums taken credit for in the valuation,

"premium term" means the period during which premiums are payable,

"valuation date" means as respects any valuation the date as at which the valuation is made

PART II

Requirements applicable to an abstract in respect of Life Insurance Business

The following tabular statements shall be annexed to every abstract prepared in accordance with the requirements of this Part of this Schedule, namely,—

(*a*) a Consolidated Revenue Account, in the Form G annexed to this Part of this Schedule, for the inter-valuation period, (except that it shall not be necessary to prepare such an account in respect of any class of business so long as the insurer deposits annually with the Controller an abstract in respect of that class of business), and

(*b*) a Summary and Valuation in the Form H annexed to this Part of this Schedule of the policies included at the valuation date in the class of business to which the abstract relates, and

(*c*) a Valuation Balance-sheet in Form I annexed to this Part of this Schedule, and

(*d*) a statement in Form DDD as set forth in Part II of the Third Schedule of the additions to and deductions from the number of policies and the sums insured thereunder for each class of life insurance for the inter-valuation period (except that it shall not be necessary to prepare such statement in respect of any class of business so long as the insurer deposits annually with the Controller an abstract in respect of that class of business

(*e*) (*Omitted by Act XIII of 1941*)

and every such abstract shall show—

1 The valuation date

2 The general principles and full details of the methods adopted in the valuation of each of the various classes of insurances and annuities shown in the said Form H, including statements on the following points

(*a*) whether the principles were determined by the instruments constituting the company or by its regulations or by-laws or how otherwise,

(*b*) the method by which the net premiums have been arrived at and how the ages at entry, premium terms and maturity dates have been treated for the purpose of the valuation,

(*c*) the methods by which the valuation age, period from the valuation date to the maturity date, and the future premium terms, have been treated for the purpose of the valuation,

(*d*) the rate of bonus taken into account where by the method of valuation definite provision is made for the maintenance of a specific rate of bonus,

(*e*) the method of allowing for—

(i) the incidence of the premium income, and

(ii) premiums payable otherwise than annually,

(*f*) the methods by which provision has been made for the following matters, namely,—

(i) the immediate payment of claims,

(ii) futher expenses and profits in the case of limited payment and paid up policies,

(iii) the reserve in respect of lapsed policies, not included in the valuation, but under which a liability exists or may arise, and whether any reserves have been made for the matters aforesaid,

(g) whether under the valuation method adopted any policy would be treated as an asset, and, if so, what steps, if any, have been taken to eliminate such asset,

(h) a statement of the manner in which policies on under average lives and policies subject to premiums which include a charge for climatic, military or other extra risks have been dealt with, and

(i) the rates of exchange at which liabilities in respect of policies issued in foreign currencies have been converted into rupees and what provision has been made for possible increase of liability arising from future variations in the rates of exchange

3 The table of mortality used, and the rate of interest assumed, in the valuation

4 The proportion which that part of the annual premiums reserved as a provision for future expenses and profits bears to the total of the annual premiums separately specified in respect of insurances with immediate profits, with deferred profits, with profits under discounted bonus systems and without profits

5 The average rates of interest yielded by the assets whether invested or uninvested, constituting the life insurance fund for each of the years covered by the valuation date

6 The basis adopted in the distribution of profits as between the insurer and policy holders, and whether such basis was determined by the instruments constituting the company, or by its rigulations or by laws or how otherwise

7 The general principles adopted in the distribution of profits among policy-holders, including statements on the following points, namely,—

(a) whether the principles were determined by the instruments constituting the company, or by its regulations or by laws, or how otherwise,

(b) the number of years' premiums to be paid, period to elapse and other conditions to be fulfilled before a bonus is allotted,

(c) whether the bonus is allotted in respect of each year's premium paid, or in respect of each completed calendar year or year of assurance or how otherwise, and

(d) whether the bonus vests immediately on allocation, or, if not, the conditions of vesting

8 (1) The total amount of profits arising during the inter valuation period, including profits paid away and sums transferred to reserve funds or

other accounts during that period, and the amount brought forward from the preceding valuation (to be stated separately) and the allocation of such profits—

(*a*) to interim bonus paid ,

(*b*) among policy-holders with immediate participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses) ,

(*c*) among policy-holders with deferred participation, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses) ,

(*d*) among policy-holders in the discounted bonus class, giving the number of the policies which participated and the sums assured thereunder (excluding bonuses) ,

(*e*) to the insurer or, in the case of an insurance company, among shareholders or to shareholders' accounts (any such sums passed through the accounts during the inter-valuation period to be separately stated),

(*f*) to every reserve fund or other fund or account (any such sums passed through the accounts during the inter-valuation period to be separately stated) ,

(*g*) as carried forward unappropriated

(2) Specimens of bonuses allotted as a result of this valuation to policies for one thousand rupees—

(*a*) for the whole term of life effected at the respective ages of 20, 30 and 40, and having been in force respectively for five years, ten years and upwards at intervals of ten years, and

(*b*) for endowment insurances effected at the respective ages of 20, 30 and 40, for endowment terms of fifteen, twenty and thirty years, and having been in force respectively for five years, ten years and upwards at intervals of ten years ,

together with the amounts apportioned under the various manners in which the bonus is receivable

9 A statement in Form J annexed to this Part of this Schedule of specimen policy reserve values held or required to be held according to the methods adopted in the valuation, and specimen minimum surrender values in respect of whole life insurance policies for Rs 1,000 with premiums payable throughout life effected at the respective ages of 20, 30, 40 and 50, and immediately on payment of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, fifteenth and twentieth annual premium , with similar specimen policy reserve values and specimen surrender values in respect of whole life insurance policies sub ect to premiums payable for 20 years and of endowment insurance policies maturing at the age of 55

10 A statement showing how the liability under any disability clause in a policy has been determined in the valuation with full information of the tables of sickness or accident used for the purpose

Consolidated Revenue Account of — FORM G — for — years commencing — and ending

	Business with n India (a)	Total		Business within India (a)
	Rs	Rs		Rs.
Claims under policies (including provision for claims due or intimated), less reinsurances—			Balance of Life Insurance Fund at the beginning of the period	
By death			Premiums, less reinsurances—	
By maturity			(i) First year premiums	
Annuities, less reinsurance			(ii) Renewal premiums	
Surrenders (including surrender of bonus) less reinsurance			(iii) Single premiums	
Bonuses in cash, less reinsurances			Consideration for annuities granted, less reinsurances (c)	
Bonuses in reduction of premiums less reinsurances			Interest, dividends and rents	
Expenses of Management			Less- Income-tax thereon (d) Rs	
1 (a) Commission to insurance agents (b) (a)—			Registration fees Rs	
(b) Allowances and commission (other than on reinsurances)			Other income (to be specified) Rs	
(less that on reinsurances)			Loss transferred to Profit and Loss Account	
sub-items (a) preceding]			Transferred from Appropriation Account	
2 Salaries, etc (other than to agents and those contained in sub-item 1 (b) preceding				
3 Travelling expenses				
4 Director's fees				
5 Auditor's fees				
6 Medical fees				

7 Law charges		
8 Advertisements		
9 Printing and stationery		
10 Other expenses of Management (account to be specified)		
11 Other payments (accounts to be specified)		
12 Rents for offices belonging to and occupied by the insurer		
13 Rents of other offices occupied by the insurer		
Bad debts		
United Kingdom, Indian, Dominion and Foreign taxes		
Other expenditure (to be specified)		
Profit transferred to Profit and Loss Account		
Balance of Life Insurance Fund at end of the period as shown in the balance-sheet		
	Rs	Rs

Notes

(*a*) These columns apply to all business except those business the premiums in respect of which are ordinarily paid outside India If any question arises whether any premiums are ordinarily paid inside or outside India, the Controller shall decide the question and his decision shall be final.

(*b*) If any sum has been deducted from this item and entered on the assets side of the balance-sheet, the amount so deducted must be shown separately

(*c*) All single premiums for annuities, whether immediate or deferred must be included under this heading

(*d*) Indian, United Kingdom, Foreign and Dominion Income tax on Interest, Dividends and Rents must be shown under this heading, less any rebates of income tax recovered from the Revenue authorities in respect of expenses of Management The separate heading on the other side of the account is for United Kingdom, Indian, Foreign and Dominion taxes, other than those shown under this item

(*e*) In the case of an insurer having his principal place of business outside India the expenses of Management for the total business need not be split up into several sub-heads, if they are not so split up in his own country

FORM H

Summary and Valuation of the Policies of .. as at 19

Description of transactions	Particulars of the policies for valuation					Valuation			
	Number of policies	Sums assured	Bonuses	Office yearly premiums	Net yearly premiums	Sums assured and bonuses	Office yearly premiums	Net yearly premiums	Net liabilities
DIVISION I *Insurances*									
Group A—									
With immediate participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Reinsurances									
Net insurances									
Group B—									
With deferred participation in profits									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Reinsurances									
Net insurances									
Group C—									
Under discounted bonus systems									
For whole term of life									
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Reinsurances									
Net insurances									
Total insurances with profits									
Group D—									
Without participation in profits									
For whole term of life									

FORM H—*contd.*

Description of transactions	Particulars of the policies for valuation					Valuation			
	Name of policies	Sums assured	Bonuses	Office yearly premiums	Net yearly premiums	Sums assured and bonuses	Office yearly premiums	Net yearly premiums	Net liabilities
Other classes (to be specified)									
Extra premiums									
Total insurances									
Deduct—Reinsurances									
Net insurances									
Total insurances without profits									
Total of the insurances shown in all groups									
Deduct—Reinsurances									
Net amount of insurances									
Adjustments, if any (to be separately specified),									
DIVISION II									
Annuities on lives									
Immediate annuities									
Deferred annuities with return of premiums									
Deferred annuities without return of premiums									
Other classes (to be specified)									
Total annuities									
Deduct—Reinsurances									
Net annuities on lives									
Total of the results after deduction of reinsurances									

Notes

1 Items in this Summary are to be stated to the nearest rupee.

2 No policy of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the Group, is to be included in Groups A, B, C or D of this Form, any such policies must be shown in a separate Group which must be added to the Form

3 If policies without participation in profits but with a guaranteed rate of bonus are issued, they must be separately specified in Group D of this Form

4 Policies under which there is a waiver of premiums during disability must be shown as a separate class

5 Separate Forms must be prepared in respect of classes of policies valued by different tables of mortality or at different rates of interest or involving the valuation of net premiums on different bases

6 In cases where separate valuations of any portion of the business are required under local laws in places outside India and reserves based on such valuations are deposited in such places, a statement must be furnished in respect of the business so valued in each such place showing the total number of policies, the total sums assured and bonuses, the total office yearly premiums, and the total net liability on the bases as to mortality and interest adopted in each such place with a statement as to such bases respectively

7 Office and net premiums and the values thereof must be shown after deduction of abatements made by the application of bonus

FORM I

Valuation Balance-sheet of as at 19

	Rs		Rs
Net liability under business as shown in the summary and valuation of policies		Balance of Life Insurance Fund as shown in the Balance-sheet	
Surplus, of any		Deficiency, if any	

Note—If the proportion of surplus allocated to the insurer, or in the case of an insurance company to shareholders, is not uniform in respect of all classes of insurances, the surplus must be shown separately for the classes to which the different proportions relate.

FORM J

Specimen policy reserve values and minimum surrender values under a. . . policy for Rs 1,000

Number of annual premiums paid up to the valuation date	Age at entry 20		Age at entry 30		Age at entry 40		Age at entry 50	
	Reserve value	Minimum surrender value	Reserve value	Minimum surrender value	Reserve value	Minimum surrender value	Reserve value	Minimum surrender value
1.								
2.								
3								
4								
5								
6								
7								
8.								
9								
10								
15								
20								

Notes—Items in this Form to be stated to the nearest rupee

The reserve value is to be based on the rate of office premium payable by an insured who entered at the age shown and who had, by the valuation date, paid the number of annual premiums shown in the first column

THE FIFTH SCHEDULE

(*See* section 13)

Regulations for preparing Statement of Business in force and Requirements applicable to such Statements

PART I

Regulations

1 Statements prepared under this Schedule must be prepared, so far as practicable, in tabular form and must be identified by numbers and letters corresponding with those of the paragraphs of Part II of this Schedule

2 Except with respect to rates of premium or contribution, items in statements prepared under this Schedule are to be shown to the nearest rupee

3 Extra premium shown in the forms of Summary and Valuation prepared under the Fourth Schedule to this Act must not be included in statements prepared under this Schedule

4 Every statement prepared under this Schedule shall be signed by the actuary making the investigation in connection with which it is prepared

5 For the purposes of this Schedule the following expressions have the meanings hereby respectively assigned to them, namely,—

(*a*) "annual loading" means the provision made for future expenses and profits ,

(*b*) "extra premiums" means a charge for any risk not provided for in the minimum contract premium ,

(*c*) "net premiums" means the premiums taken credit for in the valuation in connection with which any statement is prepared , and

(*d*) "valuation date" means as respects any valuation the date as at which the valuation is made

PART II

Requirements for statements applicable to Life Insurance business

The statements required to be prepared under this Part of this Schedule are as follows, namely,—

1 Statements separately prepared in respect of policies with and without participation in profits, showing—

(*a*) as respects policies for the whole term of life, the rates of office premiums charged, in accordance with the published tables in use, for new policies giving the rates for decennial ages at entry from 20 to 70 inclusive, and

(*b*) as respects endowment insurance policies, the rates of office premiums charged, in accordance with the published tables in use, for new policies with original terms of ten, fifteen, twenty, thirty and forty years, giving the rates for decennial ages at entry from 20 to 40 inclusive, but excluding policies under which the age at maturity exceeds 60

2 Statements separately prepared in respect of policies with immediate profits, with deferred profits, with profits under discounted bonus systems, and without profits, showing in quinquennial groups—

(*a*) as respects policies for the whole term of life—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped according to ages attained,

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable through out life, and of the corresponding net premiums, grouped according to ages attained, and

(iii) the amount per annum, after deducting abatements made by application of bonus, of office premiums payable for a limited number of years, and either, the corresponding net premiums grouped in accordance with the grouping adopted for the purpose of the valuation, or, the annual loading reserved for the remaining duration of the policies, grouped according to ages attained,

(*b*) as respects endowment insurance policies—

(i) the total amount assured (specifying sums assured and reversionary bonuses separately), grouped in accordance with the grouping adopted for the purposes of the valuation, and

(ii) the amount per annum, after deducting abatements made by application of bonus, of office premium payable, and of the corresponding net premiums, grouped in accordance w the grouping adopted for the purposes of the valuation

Provided that—

(*a*) as respects endowment insurance policies which will reach maturi in less than five years, the information required by su paragraph (*b*) (*i*) of this paragraph must be given for each ye instead of in quinquennial groups, and

(*b*) where the office premiums payable under policies for the whol term of life for a limited number of years, or the office premium payable under endowment insurance policies, or the corre sponding net premiums, are grouped for the purposes of th valuation otherwise than according to the number of years payments remaining to be made or where the sums assurec under endowment insurance policies are grouped for the pur poses of the valuation otherwise than according to the years in which the policies will mature for payment or which they are assumed to mature if earlier than the true year, then in any such case the valuation constants and an explanation of the method by which they are calculated must be given for each group, and in the case of the sums assured under endowment insurance policies a statement must also be given of the amount assured maturing for payment in each of the two years following the valuation date

3 Statements as respects any policies in force under which premiums cease to be payable, whether permanently or temporarily, during disability

arising from sickness or accident, showing the total amount of the office premiums payable

4 Statements as respects immediate annuities on single lives for the whole term of life, separately prepared in respect of annuities on male and female lives, showing in quinquennial age groups the total amount of such annuities

5 Statements as respects deferred annuities, separately prepared in respect of annuities on male and female lives showing the specimen reserve values for annuities of one hundred rupees which will be produced on maturity on the basis of valuation adopted at ages, in the case of male lives, 60 and 65, and in the case of female lives, 55 and 60, the said statements must show the specimen reserve values which will be produced under the table of annual premiums in use for new policies, and if under any other table of annual premiums in use for any other deferred annuity policies in force smaller reserve values will be produced, the like specimens of these must also be given

6 Statements as respects any policies of insurance upon the lives of a group of persons, whereby sums assured are payable in respect of the several persons included in the group, showing the total claims paid since the date as at which the last statements were prepared under this Part of this Schedule or, where no such statements have been prepared, since the date on which the insurer began to carry on the class of business to which the statements relate, and the reserve for unexpired risks and outstanding claims

THE SIXTH SCHEDULE

PART A

[*See* section 42B (1)]

Terms deemed to be included in every contract between an insurer carrying on general insurance business and a principal agent

1 All payments of commission to insurance agents shall be made by the principal agent on behalf of the insurer

2 The principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class for the procurement of which he has been appointed, as will yield a gross premium income of not less than twenty thousand rupees in each calendar year

3 In the event of the principal agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer—

(i) one-quarter of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is fire or miscellaneous insurance business, or

(ii) one-third of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is marine insurance business

4 In the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calendar years, the contract shall, without prejudice to the provisions of clause 3, terminate on the 31st day of March immediately following the second calendar year

5 Except in cases where the business relates to any property under his immediate control, a principal agent shall not by himself procure any class of general insurance business without utilising the services of an insurance agent

PART B

[*See* section 42C (1)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a chief agent

1 All payments of commission to insurance agent shall be made by the insurer direct or by the chief agent, who may make the payment either directly or through a special agent on behalf of the insurer

2 The chief agent shall employ or cause to be employed for and on behalf of the insurer either directly or through special agents at least six insurance agents in cases where the business in force of the insurer is less than one crore of rupees and in any other case at least twelve agents each of whom will procure in each calendar year new business amounting to not less than ten thousand rupees

3 Save as provided in respect of cases specified in clause 7 of this Part, the remuneration payable to the chief agent in respect of life insurance business effected through him for the insurer shall only be in the form of an overriding commission

4 In the event of the chief agent failing in two successive calendar years to comply with the requirements of clause 2, he shall forfeit to the insurer one half of the total remuneration payable to him by the insurer for those years

5 In the event of the chief agent failing to comply with the requirements of clause 2 in four successive calendar years, the contract shall, without prejudice to the provisions of clause 4, terminate on the 31st day of March immediately following the last of such calendar years

6 Not more than one intermediary to be remunerated by the insurer concerned, whether on a salary basis or by way of commission, shall be employed between the chief agent and any insurance agent, but the chief agent may employ as many persons as he thinks fit on a salary basis, provided such salaries are paid out of his overriding commission

7 In cases where the commission payable on a policy of life insurance effected through an insurance agent working under a chief agent is stopped on or after the 1st day of January 1949 and not paid to the insurance agent, an amount not exceeding one-quarter of such commission payable to the insurance agent concerned shall also be payable to the chief agent, if he continues to render service in connection with that policy and if such commission is otherwise payable to him

PART C

[*See* section 42C (4)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a special agent or between a chief agent and a special agent

1 All payments of commission to insurance agents shall be made by the insurer direct or, on behalf of the insurer, either by chief agent under whom the special agent is working or by the special agent

2 The special agent shall employ at least two insurance agents and shall procure or cause to be procured through insurance agents employed under him in each calendar year new business amounting to not less than fifty thousand rupees assured on which at least the first year's premiums have been paid in full

3 In the event of the special agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer fifty per cent of the total remuneration payable to him by the insurer, or, as the case may be, by the chief agent, for that year

4 In the event of the special agent failing to comply with the requirements of clause 2 in two successive calendar years, the contract shall, without prejudice to the provisions of clause 3 of this Part terminate on the 31st day of March immediately following the second calendar year

5 In the event of the special agent procuring life insurance business without utilising the services of an insurance agent the special agent shall be entitled only to the commission that is ordinarily payable in respect of business so procured to an insurance agent

6 The remuneration payable to the special agent in respect of policies of life insurance procured by him through insurance agents shall only be in the form of an overriding commission

Explanation —In this Schedule "business in force" means the total sum assured with bonuses, without taking into account re-insurances, ceded or accepted, by an insurer in respect of the whole of the life insurance business on the last working day of the calendar year or the period covered by the revenue account furnished by such insurer under clause (*b*) of sub-section (2) of section 16, as the case may be, preceding the calendar year in question

THE SEVENTH SCHEDULE

[*See* section 55]

Rule as to the valuation of liabilities of an insurer in insolvency or liquidation

The liabilities of an insurer in respect of currrent contracts effected in the course of life insurance business including annuity business, shall be calculated by the method and upon the basis to be determined by an actuary approved by the Court, and the actuary so approved shall, in determining as aforesaid, take into account—

(*a*) the purpose for which such valuation is to be made,

(*b*) the rate of interest and the rates of mortality and sickness to be used in valuation, and

(*c*) any special directions which may be given by the Court

The liabilities of an insurer in respect of current policies other than life policies shall be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid

PART II

THE INSURANCE RULES, 1939[1]

Preliminary

1 **Short Title**—These rules may be called the Insurance Rules, 1939

2 **Definitions**—In these Rules,—

(*i*) "the Act" means the Insurance Act, 1938 (IV of 1938),

(*ii*) "the Bank" means the Reserve Bank of India,

(*iii*) "Bombay area" means the area comprising the States of Maharashtra, Gujarat and Madhya Pradesh,

(*iv*) "Calcutta area" means the area comprising the States of Assam, Bihar, Orissa and West Bengal and the Union territories of Andaman and Nicobar Islands, Manipur and Tripura,

(*v*) "Delhi area" means the area comprising the States of Jammu and Kashmir, the Punjab, Rajasthan, Uttar Pradesh and the Union territories of Delhi and Himachal Pradesh,

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1 The Insurance Rules, 1939 as originally made and the amendments made thereto by the Central Government in exercise of the powers conferred by sub-sections (1) and (2) of section 114 of the Insurance Act, 1938 (IV of 1938) may be found in the Department of Ministry of Commerce *Notifications* :

No 597 I (1)/38 dated 3rd June, 1939
No 597 I (2)/40 dated 1st February 1941
No 597 I (2)/41, dated 2nd August 1941
No 597 I (3)/41 dated 16th August 1941
No 597-I (3)/41 dated 29th November 1941
No 597 I (3)/41 dated 14th March, 1942
No 597 I (1)/42 dated 26th September 1942
No 597 I (1)/43 dated 3rd April 1943
No 597 I (4)/43 dated 12th February 1944
No 597 I (6)/43, dated 3rd June 1944
No 597 I (3)/42 dated 11th November 1944
No 597 I (1)/46, dated 19th April 1947
No 597 I (1)/48 dated 31st July 1948
No Ins Mis E-102(1)/49 dated 7th May 1949 and
No 102 Ins E/50 dated the 18th August 1950 in the *Gazette of India* of the said date and in the Ministry of Finance Notifications
No 102 IF(1)/51 dated 26th September 1951 in the *Gazette of India* dated 6th October, 1951
No 102 IF(1)/52 dated 4th February 1953 in the *Gazette of India* dated 14th February 1953
No 102 IF(1)/57 dated 12th August 1957 in the *Gazette of India Extraordinary* Part II Section 3 dated 15th August 1957
No 102 IF(2)/57 dated 2nd November 1957, in the *Gazette of India* Part II Section 3 dated 9th November 1957
No F 51 (23)-Ins (1)/61 dated 10th May 1961, in the *Gazette of India Extraordinary*, Part II, Section 3 (i) dated 10th May 1961
No 51 (36)-Ins (1)/ED dated 28th June 1961 in the *Gazette of India*, Part II, Section 3 (i) dated 8th July 1961
No 101 (20) Ins 1/62, dated 22nd November 1962 in the *Gazette of India* Part II, Section 3(i) dated 1st December 1962
No 101 (20)-Ins 1/62 dated 10th July, 1963 in the *Gazette of India* Part II Section 3 (i) dated 20th July 1963

References to British India in the Rules as originally made were replaced by references to the Provinces of India' by the India (Adaptation of Existing Indian Laws) Order 1947 and the latter were replaced by references to the States by one of the amendments notified in the Ministry of Finance Notification No 102 IF (1)/51 dated 28th September 1951 in the *Gazette of India* dated 6th October 1951

(*vi*) "Madras area" means the area comprising the States of Andhra Pradesh, Kerala, Madras and Mysore and the Union territory of the Laccadive, Minicoy and Amindivi Islands, and

(*vii*) words used but not defined in these Rules have the meanings respectively assigned to them in the Act

Actuaries

3 **Qualifications of actuaries** —Any person signing as actuary under the Act shall be a Fellow of the Institute of Actuaries, London, or a Fellow of the Faculty of Actuaries in Scotland Provided that where application is made to the Controller of Insurance and it is shown to his satisfaction that the employment of an Associate of such Institute of Actuaries or of such Faculty of Actuaries, or of any other person having actuarial knowledge for any specified purpose is expedient in order to enable an insurer or a provident society to carry out any of his or its obligations under the Act, the Controller of Insurance may grant the application and permit such person to sign as actuary for the specified purpose subject to such conditions and restrictions as the Controller of Insurance thinks fit to impose

4 [*Omitted*]

Deposits with the Bank

5 **Deposits with the Bank** —(1) Deposits made in pursuance of the Act shall be held by that office of the Bank (hereinafter referred to as the appropriate Indian Office) in whose area of administration the principal office in the States of the depositor is situated

Provided that deposits in sterling securities shall be held by the London Office of the Bank on behalf of the appropriate Indian Office

(2) Deposits in sterling securities shall be sent by the depositor with a covering letter to the Manager of the London Office of the Bank, and shall not be brought on the books of the appropriate Indian Office until the receipt of an intimation in Form I from the London Office

(3) Deposits, other than deposits in sterling securities, shall be sent by the depositor with a covering letter to the Manager of the appropriate Indian Office of the Bank

(4) Securities shall be duly transferred to the Bank by the depositor

(5) Upon receipt of the intimation referred to in sub rule (2) or of a deposit under sub-rule (3) the appropriate Indian Office of the Bank shall send—

(*a*) a certificate in Form II to the depositor, and

(*b*) a statement in Form III to the Controller of Insurance

Provided that, if the Bank is not satisfied as to the validity of the title of the depositor to the securities it may return them to him with the request that they shall first be renewed or that such other measures as may be necessary shall be taken to clear the title

(6) The market value of sterling securities held by the Bank shall be converted at 1*s* 6*d* to the rupee

6 **Changes in deposits** —When the form or amount of a deposit is changed by reason of a subsequent deposit, a substitution or a payment under sub-section (9) or sub-section (10) of section 7 of the Act or a sale or investment under sub-section (9A) of the said section, the Bank shall, within

two weeks from the entry of such change in the books of the Bank, send a fresh certificate and a fresh statement of the nature, and in the manner, described in clauses (*a*) and (*b*) of sub-rule (5) of rule 5

7 **Maturing of deposits** —When a security in deposit matures, or when any yield on such security ceases to accrue, the Bank shall not be bound to inform the depositor , but, upon receipt of a requisition from the depositor made in writing and in accordance with the provisions of the Act, the Bank shall within six weeks of such a receipt, collect the discharge value and hold the amount in cash to the credit of the depositor or invest in securities specified by the depositor

8 **Interest and dividends on deposits** —(1) No interest shall be paid on cash deposits

(2) Interest or dividends on sterling securities shall, at the option of the depositor, be either paid in London by the London Office of the Bank after deduction of a commission of 5*s* on every sum of £100 or part thereof or remitted by the London Office of the Bank to the appropriate Indian Office of the Bank at the Telegraphic Transfer Rate on India prevailing on the date of the realisation of the interest or dividends

(3) The appropriate Indian Office of the Bank shall remit interest or dividends on securities other than sterling securities, and amounts if any received from the London Office of the Bank under sub-rule (2) without delay to the depositor at an office in India to be specified by the depositor,—

(*a*) if the office so specified is at a place where there is an office of the Bank or a branch of the Imperial Bank of India, by means of a Government draft, and

(*b*) in other cases, by a Security Deposit Interest Payment Draft on the nearest Government Treasury,

after deduction of a commission of annas four on every sum of Rs 100 or part thereof

9 **Withdrawals, etc of deposits** —(1) Withdrawals and payments from deposits and purchases of securities shall not be made save in accordance with the provisions of the Act and on receipt by the Bank of a requisition in writing and in accordance with the provisions of the Act from the depositor, a liquidator acting in accordance with law or a Court of competent jurisdiction, as the case may be

(2) The Bank shall not be bound, in pursuance of sub-rule (1), to return securities actually deposited, but may substitute therefor new scrip of securities of the same description and amount

(3) The Bank shall be entitled to charge, for the purchase or sale of securities any brokerage payable by the Bank in respect of such purchase or sale

10 **Information as regards deposits** —(1) The Controller of Insurance shall be entitled, free of any fee to inspect or to require from the Bank any information relating to any security deposited with the Bank under the Act

(2) The Bank shall, if so required, furnish the Controller of Insurance or any person authorised by him in that behalf in writing with a copy of any entry in any register or book maintained by the Bank relating to any deposit made with the Bank under the Act

(3) The Bank shall publish as soon as may be after the 1st January in each year in such manner as the Central Government may direct a list in Form IV of deposits made with it under the Act, as at 31st December of the preceding year

Securities and investments

10A Pakistan securities—Securities guaranteed fully as regards principal and interest by a Provincial Government in Pakistan or charged on the revenues of any part of that Dominion and debentures, or other securities for money issued by or on behalf of the trustees of the Port of Karachi shall be recognised, in the case of insurers incorporated or domiciled in India, as approved securities—

(*a*) for the purposes of sections 7, 98 or 73, if such securities had been deposited with the Bank in pursuance of the Act before the 15th day of August, 1947 and continue to be so deposited with the Bank since that date, and

(*b*) for the purposes of sections 27 and 27A if such securities had been acquired by an insurer or a provident society before the 15th day of August, 1947 and continue to be held since that date by the insurer or the provident society

10B Assets deemed to be approved investments—For the purposes of sub section (1) of section 27 of the Act the following assets shall be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A of the Act

(*a*) interest, dividend and rents (outstanding and accrued),

(*b*) cash in hand and with banks (other than banks in liquidation) in current and collection accounts ,

(*c*) bills receivable ,

(*d*) value of furniture, fittings, machinery, stationery and library but not exceeding Rs 10 000 or one per cent of the sum referred to in sub-section (1) of section 27 of the Act, whichever is greater

(*e*) value of motor cars but not exceeding Rs 20 000 or one half per cent of the sum referred to in sub-section (1) of section 27 of the Act, whichever is greater ,

(*f*) stamps on hand

(*g*) amount of income tax directed by the Income tax authority to be refunded ,

(*h*) temporary advances granted to chief special and insurance agents to the extent permitted under clause (*b*) of sub-section (3) of section 29 of the Act

10C Returns of investments and changes in investments—(1) The return to be furnished under sub-section (1) of section 28A of the Act shall show all the investments made out of the controlled fund and subsisting as at the 31st day of December of the preceding year and shall be in Form IV A

(2) The return to be furnished under sub-section (2) of section 28A of the Act shall be in Form IV-B

10D Charging assets—An insurer may subject the assets forming his controlled fund, not being securities kept invested in pursuance of sub-section (1) of section 27, to a charge in favour of a banking company for the purpose of raising an over-draft and investing the money so raised

Provided that the assets charged do not exceed in value 10 per cent of the controlled fund and the charge is created for a period not exceeding six months

Prospectus, Tables and Proposal Forms

11 Prospectuses and tables—(1) No person shall supply or exhibit any prospectus or table of premium rates to any other person with a view to the issue of a policy of insurance unless such prospectus or table includes—

(*a*) a description of the contingency or contingencies to be covered by insurance and the class or classes of lives or property eligible for insurance under the terms of such prospectus or table,

(*b*) a full statement of the circumstances, if any, in which rebates of the premiums quoted in the prospectus or table shall be allowed on the effecting or renewal of a policy, together with the rates of rebate applicable to each case, and

(*c*) a copy of section 41 of the Act but not including the proviso to sub-section (1) thereof

(2) The provisions of sub-rule (1) shall be deemed to have been complied with if to every such prospectus or table of premium rate supplied or exhibited after the date of commencement of the Act is attached in the form of an addendum a statement containing so much of the matters referred to in sub-rule (1) as is not already included in the said prospectuses or tables but every prospectus and table of premium rates printed after the coming into force of the Act shall have the matters referred to in the said clauses incorporated therein

12 Proposal forms—(1) Every proposal form in the case of life insurance or in the case of any other form of insurance the document, if any forming the basis of the contract shall contain the statement and copy mentioned in clauses (*b*) and (*c*) of sub rule (1) of rule 11

(2) The provisions of sub rule (2) of rule 11 shall apply *mutatis mutandis* to proposal forms, except that where an addendum is attached to a proposal form, it shall also be signed by the person who signs the proposal form

Committees of the Insurance Councils

12A List of Insurers—The Controller shall, cause to be published in the *Gazette of India* a list of the members and associate members of the Life Insurance and General Insurance Councils of the Insurance Association of India once every year in the month of January

12B Constituencies of Insurers—(1) Members of the Insurance Association of India who are insurers carrying on life insurance business and having a premium income in such business of more than three lakhs of rupees in the preceding year shall elect four individuals as members of the Executive Committee of the Life Insurance Council of the Insurance Association of India in the following manner

(*a*) one individual by such members as have their head offices in the Calcutta area ,

(*b*) two individuals by such members as have their head offices in the Bombay area,

(*c*) one individual by such members as have their head offices in the Delhi and Madras areas, the members in each area alternately electing the individual, the first election being held in the Delhi area

(2) Members of the Insurance Association of India who are insurers carrying on life insurance business and having a premium income in such business of less than three lakhs of rupees in the preceding year shall elect four individuals as members of the Executive Committee of the Life Insurance Council of the Insurance Association of India in the following manner

(*a*) one individual by such members as have their head offices in the Calcutta area,

(*b*) one individual by such members as have their head offices in the Bombay area ,

(*c*) one individual by such members as have their head offices in the Madras area ,

(*d*) one individual by such members as have their head offices in the Delhi area

(3) Members of the Insurance Association of India who are insurers carrying on general insurance business shall elect eight individuals as members of the Executive Committee of the General Insurance Council of the Insurance Association of India in the following manner —

(*a*) one individual authorised to stand as a candidate by a member having his head office in the Calcutta area and whose premium income in such business in the preceding year exceeded ten lakhs of rupees and elected to the Committee by such members as have their head offices in the Calcutta area ,

(*b*) one individual authorised to stand as a candidate by a member having his head office in the Calcutta area and whose premium income in such business in the preceding year did not exceed ten lakhs of rupees and elected to the Committee by such members as have their head offices in the Calcutta area ,

(*c*) two individuals each of whom is authorised to stand as a candidate by a member having his head office in the Bombay area and whose premium in such business in the preceding year exceeded five lakhs of rupees and elected to the Committee by such members as have their head offices in the Bombay area ,

(*d*) two individuals each of whom is authorised to stand as a candidate by a member having his head office in the Bombay area and whose premium in such business in the preceding year did not exceed five lukhs of rupees and elected to the Committee by such members as have their head offices in the Bombay area,

(*e*) one individual elected to the Committee by such their head offices in the Madras area,

(*f*) one individual elected to the Committee by such members as have their head offices in the Delhi area

(4) For the purpose of this rule if any dispute arises as to which area an insurer belongs, or as to the premium income of an insurer, the Controller shall decide the question and his decision shall be final

Explanation—In this rule—

(i) "preceding year" means the calendar year preceding the calendar year in which the election takes place

(ii) "premium income" means the gross direct premium income of the insurer without taking into account premium income on reinsurances accepted or ceded

12C Duties of dissolved Executive Committees—When the Executive Committee of the Life Insurance Council or of the General Insurance Council is dissolved, the outgoing members thereof who continue to hold office until a new Executive Committee is constituted, shall be entitled to discharge the following duties in the meantime

(*a*) keep and maintain up to date a copy of the list of all members and associate members of the Life Insurance Council or the General Insurance Council, as the case may be ,

(*b*) supervise the work of officers and servants employed by the Committee ,

(*c*) collect the prescribed fee , and

(*d*) help the Chairman and the Secretary to conduct the necessary elections to the new Executive Committee

12D Joint meetings of Executive Committees—(1) When a request is received by the Central Government from—

(*a*) the Controller of Insurance, or

(*b*) six individuals who are members of either or both of the Executive Committees of the Life Insurance Council and the General Insurance Council, or

(*c*) thirty insurers,

that a joint meeting of the Executive Committees should consider a matter specified in the request the Central Government may on being satisfied that the matter is one of common interest to the two Executive Committees, direct that a joint meeting of the two Executive Committees be convened to consider the matter

(2) It shall be the duty of the Chairman of the two Executive Committees to convene, as soon as may be after the issue of the direction under preceding sub-rule a joint meeting of all the members of the two Executive Committees at such place and at such time and date as the two Chairmen may decide

(3) At such meeting one of the two Chairmen shall be elected by the members present to preside and the matter referred to and no other matter shall be considered

(4) The meeting may be adjourned from time to time to be held not necessarily at the same place with the consent of the members present for

further consideration of the matter or for considering a report from any sub-committee appointed for the purpose by the members present, but minutes of each meeting shall be kept and a copy thereof shall be furnished to the Controller of Insurance immediately after the meeting

Election of Directors by policy holders

13 **Qualifications of elected directors of insurance companies**—(1) A person shall be eligible for election as a director of an insurance company under section 48 of the Act, if he holds one or more policies of life insurance issued by the company and satisfying the provisions of the said section and both the following requirements, namely,—

(*a*) the policies shall insure either a total sum, including any bonuses that may have attached to them before the date of election of not less than Rs 3,000, where the company has at that date been carrying on life insurance business for not less than five years, or of not less than Rs 1,000 in other cases, or annuities on human life of a total amount of not less than Rs 250 per annum without regard to the age of the company, and

(*b*) where the company has been carrying on life insurance business for more than two years, all the policies held in compliance with clause (*a*) shall have been in force for not less than one, two or three years, according as the company has at the date of election been carrying on life insurance business for not more than five years, for more than five but not more than eight years, or for more than eight years

Provided that the Central Government may, in respect of any insurer after taking into account the maximum sum assured permissible according to constitution or rules and regulations and other conditions modify the above qualifications by fixing (i) for the sum insured or annuity, an amount lower than the corresponding amount mentioned in clause (*a*) or (ii) for the period, a period shorter than the one mentioned in clause (*b*) or (iii) both

(2) If at any date after election as a director, a person ceases to be a person holding one or more policies of life insurance satisfying the provisions of section 48 and both the requirements specified in sub-rule (1) he shall forthwith cease to be an elected director of the company

14 **Election of directors under section 48**—(1) The election of directors under section 48 of the Act shall take place at a meeting (to be held at the place where the principal office of the company is situated or, with the prior consent and approval in writing of the Controller of Insurance at any other place) of the holders of policies of life insurance issued by the company, who are eligible to vote at such election and the first such election shall be held as soon as possible after the said section becomes applicable to the company

(2) Not less than three months before the meeting is to be held there shall be inserted in a newspaper published in the English language and in a newspaper published in an Indian language circulating in the place where the principal office of the company is situated and if there are policy holders of the company residing in a State other than that in which the principal office of the company is situated, in a newspaper published in the English language and if the company so desires in a newspaper published in a principal language of that State, both being papers circulating in that

notice stating the number of directors to be elected at, and the time and place of, such meeting, which shall be fixed with a view to affording voters the fullest opportunities for attending, and informing policy-holders how to obtain admission to the meeting according to the manner hereinafter described. Such notice shall also set forth the qualifications which a person must possess in order to be eligible for election as a director, and shall invite applications from eligible persons prepared to accept office

Provided that, where a company prints on its policies the qualifications of elected directors as set forth in rule 13, and issues, at least six months before the election, to all existing policy-holders whose policies do not contain a statement of those qualifications as modified up to date, a notice setting forth such modified qualifications, the notice to be published in newspapers in accordance with this sub rule need not set forth those qualifications

Provided further that a company may, in respect of one or more States instead of publishing the notice in newspapers, send it by post to every policy holder residing therein

(3) The applications from eligible persons prepared to accept office as elected directors of the company shall be sent by registered post to the principal office of the company so as to reach it not less than two months before the date of the meeting Such applications shall be made in the English language or in a principal language of the State in which the principal office of the company is situated If the number of such applicants does not exceed the number of directors to be elected, all such applicants shall be deemed to have been elected as directors and it shall not be necessary to hold the meeting of policy holders as previously announced The company shall in that event inform the policy holders forthwith by notice inserted in newspapers as in sub-rule (2), or by notice sent individually by post to those policy-holders who are eligible to vote and who apply for a certificate of admission under sub-rule (4) or by both methods, of the names of persons elected as directors and of the cancellation of the meeting

(3A) An application sent under sub-rule (3) shall give to applicant's name and address and the numbers of and amounts of the sums insured by the policies by virtue of which he claims to be eligible for election

(4) Every policy holder who desires to attend the meeting shall apply to the company for a certificate of admission, such application to reach the company not less than two months before the date of the meeting, and the company on being satisfied that the applicant holds a policy of life insurance issued by the company not less than six months before the date of election shall issue a certificate at least one month before the date of the meeting Such certificate shall, if applied for by post, be sent only to the address of the policy holder or if applied for in person be delivered only on production of the relevant policy and shall in any case, be accompanied by a statement of the names and addresses of the eligible persons prepared to accept office whose applications have been received by the company under sub-rule (3) A certificate of admission shall not be transferable

(5) No person other than those whose presence is in the opinion of the Chairman necessary for the conduct of the meeting shall be admitted to the meeting unless he produces the certificate of admission granted to him under sub rule (4)

(6) The meeting shall be presided over by the Chairman for the time being of the Board of Directors of the company, or in his absence by any

Director nominated by him, or in the absence of any such director by a Chairman elected by the policy holders present at the meeting

(7) Votes for the election of directors may be given at the meeting either personally or by proxy and in the manner hereinafter provided in this rule The instrument appointing a proxy shall be in writing in Form IV C under the hand of the appointer in favour of a policy holder, and shall be presented at the principal office of the company not less than one month before the date of the meeting No policy-holder shall appoint more than one proxy irrespective of policies he holds

(8) Every policy-holder present at the meeting shall be given one voting paper on his own behalf irrespective of the number of policies he holds and one voting paper in respect of each proxy, if any, which he holds The number of votes to be given on each voting paper shall not exceed the number of directors to be elected and not more than one vote shall be given on each voting paper to any one candidate

Provided that a policy-holder may, if he prefers, vote on one voting paper in respect of all the proxies he holds In that event the number of votes to be given on the voting paper shall not exceed the number of directors to be elected multiplied by the number of proxies held and the number of votes given to any one candidate on that paper shall not exceed the number of proxies held

(8A) If any policy holder is a lunatic or an idiot, he may vote by his legal representative , and if any policy-holder is a minor he may vote by his legally appointed guardian, or any one of such guardians, if more than one

(8B) If a policy has been proposed for, and taken out jointly by, more than one person having insurable interest between them, each such person shall be entitled to vote as a holder of that policy

(9) The votes shall be counted by the company's auditors if present in that capacity, or failing them by scrutineers appointed by the meeting and working under the supervision of the Chairman The result of the ballot shall be announced at the meeting and in the event of an equality of votes the election shall be decided by lot

Provided that if the counting of votes is not likely to be completed by 7 p m on the date of the meeting, the Chairman may lock, seal and take charge of the ballot box in the presence of the meeting and postpone the counting of votes by not more than 48 hours The opening of the ballot box shall be done by the Chairman and the counting shall be carried out by the same persons as are specified in this sub rule for this purpose within the said 48 hours after reasonable notice of the time and place where the counting is to take place has been given to the candidates but no others except those whose presence is necessary for the purpose of making the counting and the declaration Each candidate or in his absence his authorised representative shall be allowed to be present to witness the opening and the counting The result of the ballot shall then be communicated by notice published in newspapers as in sub-rule (2) or individually by post to all policy-holders who were present in person at the election or by both methods

(10) For the purposes of sub-rule (3) of rule 15 a list shall be prepared of those of the unsuccessful candidates in whose favour any valid votes were cast in descending order of the number of such votes cast for each If

more such candidates have an equal number of such votes cast for them they shall be placed in the list in the alphabetical order of their signatures in their applications under sub rule (3) For the purposes of this sub-rule, no valid vote shall be deemed to be cast for a candidate if his own vote is the only vote cast for him

(10A) No election shall be held at any meeting convened under these rules unless a quorum of policy-holders holding certificates issued under sub-rule (4) is personally present at the time when the meeting proceeds to business The number of such certificate holders who must personally be present to constitute a quorum shall be five times the number of directors to be elected at that meeting

(10B) If within half an hour from the time appointed for the meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the policy-holders present and holding certificates issued under sub-rule (4) shall be a quorum

(11) An election held in accordance with this rule shall not be invalid merely by reason of the accidental omission to send any notice or other document to, or the non receipt of any notice or other document by, any policy holder, or of any other accidental irregularity or informality in the observance of the provisions of this rule

15 **Period of office of directors and filling of vacancies**—(1) An election of directors under these rules (other than the first such election) shall be held not later than three years from the date of the last such election

Provided that an election for the holding of which the latest date otherwise permissible under this sub-rule is a date in the year 1943 may be postponed to a date not later than the 31st December, 1944

(2) At every meeting of policy holders held in pursuance of sub-rule (1) all the directors elected or appointed under these rules shall retire, but any director so retiring shall, if he remains eligible under rule 13, be eligible for re-election

(3) In the event of a casual vacancy arising among the directors elected or appointed under these rules, the vacancy shall be filled by appointing the person highest in the list prepared under sub-rule (10) of rule 14, who remains eligible under rule 13 and is willing to act as a director

(4) Any person in the said list who is not appointed in his turn under sub-rule (3) either because he has ceased to be eligible under rule 13 or because of his unwillingness to act shall be removed from the list

(5) In the event of there being no person available for appointment under sub-rule (3) the casual vacancy shall be filled by the remaining directors (if not less than two in number) elected or appointed under these rules by appointing a person eligible under rule 13, or if such directors (or a majority of them) are unable to agree upon a person to be appointed the appointment shall be decided by lot from amongst the persons eligible under rule 13 who have been considered for the appointment by the said remaining directors

(6) In the event of there being only one or no such remaining director, the casual vacancy shall be filled by an election in accordance with the rules to be held not later than six months from the date on which the vacancy

occurred, unless the company secures from the Central Government within two months from the said date an exemption for that purpose from the provisions of section 48 of the Act under clause (*b*) of sub-section (3) thereof

(7) Any person appointed or elected to fill a casual vacancy shall be subject to retirement at the same time as would have been the director in whose place he is appointed or elected

(8) An election held in pursuance of sub rule (6) to fill a casual vacancy shall not be reckoned as an election for the purpose of sub-rule (1)

(9) Nothing in this rule shall be deemed to affect the application of Regulations 78 and 79 in Table A of the First Schedule to the Indian Companies Act, 1913 (VII of 1913), to directors elected or appointed otherwise than under these rules

Licences and Certificates

16 **Licence fee for insurance agents and collection thereof** —The fee for obtaining or renewing a licence to act as an insurance agent shall be Rs 5 provided that an additional fee of Rs 2 shall be paid if the application for the renewal of the licence does not reach the Controller at least 30 days before the date on which the licence ceases to remain in force

16A **Issue of licences to insurance agents** —An applicant who desires to obtain or renew a licence to act as an insurance agent shall proceed as follows

(*a*) The applicant shall obtain from the Controller of Insurance a form of application for a licence which shall be,—

(*i*) in the case of an individual, Form V, or Form V-A, if he applies for the grant of a licence for the first time or for the renewal of the licence held by him, as the case may be ,

(*ii*) in the case of a company or firm Form V-P, or Form V-PA if it applies for the grant of a licence for the first time or for the renewal of the licence held by it, as the case may be ,

(*iii*) in the case of a co-operative society or a Panchayat, Form V-S, or Form V-SA, if it applies for the grant of a licence for the first time or for the renewal of the licence held by it, as the case may be

(*b*) He shall then send to the Controller of Insurance the completed application form with the fee which shall be paid in the form of stamps to the value of Rs 5 or Rs 7 as the case may be, and the stamp shall be affixed to the application in the proper place

(*c*) The Controller of Insurance or the officer authorised by him under sub-section (1) of section 42 of the Act shall issue a licence after taking all reasonable steps to satisfy himself that the application is in order and that the applicant is not disqualified from holding a licence No application shall be considered by the Controller of Insurance unless the particulars in Form V-B, Form V-PB, or Form V SB, as the case may be, have been filled in by the applicant

In the case of—

(i) an individual, the licence shall be in Form V-B ,

(ii) a company or firm, it shall be in Form V-PB,

(iii) a co-operative society or a Panchayat, it shall be in Form V-SB.

(d) No application for the renewal of licence will be accepted if it reaches the Controller on or after the date on which the licence ceases to be in force

Provided, however, that if an applicant desires that this application should be considered under the proviso to sub section (3A) of section 42 of the Act he shall forward along with such application a request to that effect with stamps to the value of Rs 30 affixed thereon and a statement of all the facts and particulars which are to be taken into consideration by the Controller for the purpose of examining whether undue hardship would be caused if no renewal of licence is granted

Provided further that the applicant, if required to do so by the Controller shall furnish documentary proof of any of the particulars or facts mentioned in the statement referred to above

16B Bona fide insurance agents for the purposes of section 41—The conditions to be satisfied by an insurance agent to establish that he is a *bona fide* insurance agent employed by the insurer for the purposes of the proviso to sub-section (1) of section 41 of the Act shall be the following, namely —

(a) He must have secured policies on six different lives excluding his own

(b) He must have been an insurance agent continuously from the time of his soliciting or procuring the first policy on each of such six lives or proposing for the policy on his own life, whichever is earlier, till the time when the policies on those six lives and the policy on his own life have all been issued

16C Fee for Principal, Chief and Special Agents—The fee for obtaining or renewing a certificate to act as a principal agent or chief agent shall be Rs 25 and the fee for obtaining or renewing a certificate to act as a special agent shall be Rs 10

Provided that an additional fee of Rs 5 in the case of a principal agent or a chief agent, and Rs 3 in the case of a special agent, shall be paid, if the application for renewal of the certificate reaches the Controller on or after the date on which the certificate ceases to be in force but within 12 months of the aforesaid date

16D Issue of certificates to Principal, Chief and Special Agents—A person, who desires to obtain or renew a certificate to act as a principal agent or chief agent or special agent, shall proceed as follows

(a) He shall obtain from the Controller a form of application for a certificate which form shall be as prescribed in Form V-C or Form V-D Form V C shall be used when an applicant applies for a certificate for the first time, or for a fresh certificate, while Form V-D shall be used when an applicant applies for the renewal of the certificate already held by him No application

for the renewal of a certificate will be accepted if it reaches the Controller after a period of 12 months from the date on which the certificate ceases to be in force

(*b*) He shall then send to the Controller the completed application form with stamps to the value of Rs 25 or Rs 30 or Rs 10 or Rs 13 as the case may be, affixed thereon in the proper place

(*c*) The Controller or the officer authorised by him under sub section (1) of section 42A of the Act shall, after taking all reasonable steps to satisfy himself that the application is in order and that the applicant is not disqualified from holding a certificate, issue a certificate in Form V-E

16E Issue of duplicate licences and certificates—(*a*) A person to whom a licence or a certificate has been issued shall, if such licence or certificate has been lost, destroyed or mutilated, submit to the Controller an application requesting the issue of a duplicate licence or certificate with a fee of Re 1 in the case of a licence, and Rs 2 in the case of a certificate, paid in the form of stamp duly affixed thereon and with a declaration giving full details regarding the issue and loss, destruction or mutilation of the licence or certificate, and the mutilated pieces, if any, shall be returned to the Controller with the said application

(*b*) The Controller, after satisfying himself that the original licence or certificate has been lost, destroyed, or mutilated issue a duplicate licence in Form V-B or Form V-PB or Form V-SB or a certificate in Form V-E as the case may be, with an endorsement thereon that it is a duplicate

16F Description of stamp—Any fee specified in Rules 16, 16A, 16C, 16D and 16E shall be paid in the form of "Government of India Insurance" stamps available from a Government treasury

16G Allowance for unused stamps—Where an applicant for licence or a certificate has inadvertently used 'Government of India Insurance' stamp of a greater value than is necessary or where no licence or certificate in respect of an application bearing such stamp has been issued refund may be made of the excess of the necessary fee or of the value of the stamp, as the case may be, on such application

16H Cancellation of licences or certificates—Where the Controller cancels the licence of an insurance agent under sub-section (5) of section 42 or the certificate of a principal or chief or special agent under sub-section (4) of section 42A, he shall—

(*a*) inform all the officers authorised by him under sub section (1) of section 42 or 42A that the licence or the certificate, as the case may be, has been cancelled,

(*b*) require the person concerned to return the licence or certificate issued to him, and

(*c*) cause the fact of cancellation to be published in the *Gazette of India* and in such State Gazette or Gazettes as he deems fit

Shares, Ownership and Disposal

17 Declaration as to the nature of ownership of shares—The declaration to be furnished by a transferee in pursuance of clause (*b*) (*i*) of sub-section (4) of section 6A of the Act to a public company limited by shares having its registered office in the States and carrying on life insurance business shall be in Form V-F

17A Declaration as to beneficial interest in shares—The declaration to be made in pursuance of sub-section (5) of section 6A of the Act to a public company limited by shares having its registered office in the States and carrying on life insurance business by a person who has any interest in any of its shares standing in the name of another person shall be in Form V-G

17B Disposal of shares by Administrator General—As soon as the Administrator-General of a State has taken charge of any shares of a public company vesting in him under sub-section (8) of section 6A of the Act, he shall furnish full details of the shares to the Controller and he shall try, as soon as may be, to sell the shares, whether as a whole or in part or whether in the open market or by private sale, at a price not lower than the price fixed by the Controller who may vary the price fixed from time to time The proceeds shall be handed over to such person as, in the opinion of the Administrator General, is by law entitled thereto

Limitation of expenses of management

17C Statement of the bases of premiums—(1) The statement of the bases of premiums under sub-section (1) of section 40B of the Act shall be in Form V-H

(2) In respect of premiums currently used by an insurer at the commencement of the Insurance (Amendment) Act 1950, the statement of the bases of premiums certified by an actuary shall be furnished to the Controller within six months from such commencement

(3) A statement on the bases of premiums to be newly used after such commencement certified by an actuary shall be furnished to the Controller before such premiums are offered by the insurer to prospective policy holders

17D Limitation of expenses of management in life insurance business—After the 31st day of December, 1950, no insurer shall in respect of the life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount exceeding the aggregate sum of—

(i) five per cent of all premiums received during the year on policies granting an immediate annuity or a deferred annuity in consideration of a single premium, and five per cent of all premiums received on other single premium policies during the year,

(ii) ten per cent of all first year's premiums and four per cent of all renewal premiums received during the year on policies granting deferred annuity in consideration of more than one premium,

(iii) one twentieth of one per cent of the average of the total sums assured by policies on which no further premiums are payable (less re-insurances) at the beginning and end of the year,

(iv) one per cent of all annuities paid during the year,

(v) an amount computed on the basis of the percentages for the time being appropriate to the duration of the insurer's life insurance business specified in the following table, namely,—

Duration of insurer's life insurance business	Percentage of premiums (less re-insurances) received during the year other than premiums referred to in items (i) and (ii) above	
	of first year's premiums	of renewal premiums
First four years	100	20
Fifth to seventh years	96½	19
Eighth to tenth years	93	18
After the tenth year, if the insurer's business in force		
(*a*) is less than two crores of rupees	90	18
(*b*) is less than five crores of rupees but not less than two crores of rupees	90	17
(*c*) is less than ten crores of rupees but not less than five crores of rupees	90	16
(*d*) is not less than ten crores of rupees	90	15

Provided that the percentages specified in the above table shall in respect of any first year's premium where the maximum premiums paying period under the policy is not throughout life more than eleven years, be reduced to a number equal to seven and a half times the number of whole years in that period

Explanation I—In this rule, "business in force" means, in relation to any expense incurred, the total sum assured, with bonuses, without taking into account reinsurances ceded or accepted, by an insurer in respect of the whole of his life insurance business on the last working day of the year preceding the calendar year in which the expense is incurred

Explanation II—The duration of an insurer's life insurance business shall be reckoned from the beginning of the calendar year of commencement of the business if the date of commencement is in the first half of the year and from the end of the calendar year of such commencement if the date of commencement is in the second half of the year

17E Limitation of expenses of management in general insurance business—(1) After the 31st day of December 1949, no insurer shall, in respect of general insurance business transacted by him in India other than marine insurance business spend in any calendar year as expenses of management, including commission or remuneration for procuring business, an amount exceeding the sum of—

(i) the amount of commission or other remuneration paid to insurance agents and principal agents in respect of that business transacted in the year but not exceeding 15 per cent of the gross premium income written direct in India in respect of that business in the year, and

(ii) an amount computed on the bases of the percentages appropriate to the various parts of total gross premium income written direct in India during the year

Part of the total gross premium income of the insurer written direct in India (Fire and Miscellaneous business combined)	Percentage of premiums
First 10 lakhs of rupees	35
Next 5 lakhs of rupees	30
Next 5 lakhs of rupees	25
Next 7½ lakhs of rupees	27½
Next 7½ lakhs of rupees	20
Next 10 lakhs of rupees	22½
The balance	20

(2) After the 31st day of December, 1949, no insurer shall, in respect of marine insurance business transacted by him in India, spend in any calendar year as expenses of management, including commission or remuneration for procuring business an amount exceeding the sum of—

(*i*) the amount of commission or other remuneration paid to insurance agents and principal agents in respect of that business transacted in the year but not exceeding in amount ten per cent of the gross premium income written direct in India in respect of that business in the year, and

(*ii*) an amount computed on the basis of percentages appropriate to the various parts of his total gross premium income written direct in India during the year

Part of the total gross premium income of the insurer written direct in India	Percentage of premiums
First 5 lakhs of rupees	25
Next 5 lakhs of rupees	22½
Next 5 lakhs of rupees	2
Next 7½ lakhs of rupees	17½
The balance	15

(3) Notwithstanding anything contained in sub-rules (1) and (2) an insurer may, during the first ten years of his general insurance business, spend in any calendar year as expenses of management including commission for remuneration for procuring business an additional amount, in respect of his general insurance business, not exceeding—

(i) during the first three years, the interest earned on the paid-up capital in that year,

(ii) during the second period of three years, an amount equal to 10 per cent of the gross premium income written direct in India or to the interest earned on the paid-up capital in that year, whichever is less,

(iii) during the seventh and eighth years an amount equal to 5 per cent of the gross premium income written direct in India, or to three-fourths of the interest earned on the paid-up capital in that year whichever is less

Provided that nothing in this clause shall apply to regulate the expenses of an insurer in any such year if his gross premium income in that year exceeds twenty-five lakhs of rupees,

(iv) during the ninth and tenth years an amount equal to 3 per cent of the gross premium income written direct in India, or to half of the interest earned on the paid up capital in that year whichever is less

Provided that nothing in this clause shall apply to regulate the expenses of an insurer in any such year if his gross premium income in that year exceeds twnety-five lakhs of rupees

Explanation—For the purposes of this rule, where two or more insurers carry on general insurance business, to one of whom the other or each of the others stands in the relation of a subsidiary company within the meaning of the Indian Companies Act, 1913, the percentages specified in this rule shall be deemed to be the percentages of the aggregate premiums of the two insurers or all the insurers as the case may be and the insurers together shall not spend as expenses of management anything in excess of the limits specified herein

17F Head Office expenses—The share of the Head Office expenses in the case of an insurer having his principal place of business outside India for the purposes of sections 40B and 40C of the Act shall not be less than—

(i) in respect of life insurance business 10 per cent of the first year's premium as shown in the revenue account, and 1 per cent of the renewal premiums as shown in the revenue account in respect of that business transacted in India during the year, and

(ii) in respect of general insurance business 5 per cent of the gross premium income written direct in India during the year in respect of that business

Contravention of limitation of expenses and Tariff Regulation

17G Action against extravagant life insurers—(1) If it appears from the report of an actuarial valuation under sub-section (3) of section 64K of the Act read with the statutory returns relating to accounts that the insurer concerned is insolvent, the Controller may cancel the registration of such insurer and request the Executive Committee of the Life Insurance Council to consider whether in the circumstances of the case it is possible to have the business of the insurer reconstructed or whether some other insurer is willing to take over the business

(2) When such a request is received, the Executive Committee of the Life Insurance Council shall meet not later than one month of the receipt of such request to consider the matter and within seven days of such meeting shall communicate its decision to the Controller

(3) If the Executive Committee is unable to meet within the time specified in sub rule (2) or is unable to suggest any practical steps for the reconstruction or transfer, the Controller may, as soon as may be, apply to the Court for the winding up of that insurer

(4) If the valuation under sub-section (3) of section 64K does not disclose the insurer to be insolvent, the actuary making the investigation shall append to his report a statement whether an encroachment on the bonus loadings contained in the premiums has occurred and whether such encroachment is due either partly or wholly to heavy expenses incurred by the insurer after giving credit for any profits made in other directions The Controller may request the Executive Committee of the Life Insurance Council for advice so that such encroachment may neither continue nor recur and the Executive Committee shall meet within a month of the receipt of such request and make such recommendations as it deems fit

(5) On receipt of the recommendations referred to in sub rule (3) or sub-rule (4), the Controller may issue such directions to the insurer concerned as he deems fit and if the insurer complies with such directions, the cancelled registration may be revived wherever possible or where it is not so possible the insurer may be registered afresh

(6) If the directions are not complied with, the Controller may apply to the Court for the winding up of the insurer

17H Action against extravagant general insurers—(1) In pursuance of sub-section (3) of section 64M of the Act the Controller may—

(*a*) cancel the registration of the insurer under the Act, and

(*b*) request the Executive Committee of the General Insurance Council to consider practical steps for the reconstruction of the insurer concerned or for transferring its business to some other insurer

(2) When such a request as is referred to in the preceding sub-rule is received by the Executive Committee of the General Insurance Council, it shall meet not later than one month of the receipt of such request to consider the request and within seven days of such meeting shall communicate its decision to the Controller

(3) The Controller may, after considering the recommendations of the Executive Committee in this behalf apply to the court for the winding up of the insurer concerned if he thinks fit

17I Regional Councils and Committees—(1) The General Insurance Council may constitute one Regional Council for each of the Bombay, Calcutta Delhi and Madras areas

(2) Any Regional Council so formed shall consist of seven individuals at least four of whom shall be elected by the members of the Insurance Association of India carrying on general insurance business in that area

(3) Under any such Regional Council there shall be separate Sectional Committee for each of the three classes of insurance, *viz* fire, marine and

miscellaneous and each such Committee shall consist of seven individuals, of which at least four shall be elected by members of the Insurance Association of India carrying on that class of general insurance business in that area

17J Penalties for tariff breaches—(1) Where an insurer is guilty of contravening any regulations made under sub section (1) of section 64 U the Tariff Committee of the General Insurance Council may, after considering the nature and gravity of such contravention, take one or more of the following courses of action against such an insurer

(*a*) administering a censure or warning in addition to correction of the defect or cancellation of the policy,

(*b*) imposing a fine not exceeding Rs 1,000 , and

(*c*) disqualifying him for a limited period not exceeding three years from voting at any election to the Executive Committee, to the Regional Councils or to the Sectional Committees of the Regional Councils

(2) Where an insurer has been subjected to any penal action under (*b*) or (*c*) above, he may appeal to the Central Government within 30 days of the taking of such penal action

17K Appeal by agents against disciplinary action—(1) A principal agent or an insurance agent who has been restrained by any Regional Council or any Committee thereof under sub-section (3) of section 64Q of the Act from procuring or causing to be procured general insurance business from any area, may appeal to the Central Government within thirty days of the imposition of such restraint on him

(2) The Central Government may for the purpose of disposing of any appeal under this rule require such information supported by documentary proof wherever possible from the agent concerned as it may require

Provident Societies

18 **Transaction of bond investment business**—(1) Provident societies which immediately before the commencement of the Act were transacting bond investment business may continue to receive premiums or contributions and to make payments in respect of such business but shall not undertake any new business of that class

(2) For the purpose of sub-rule (1), 'bond investment business' means the business of effecting contracts by the issue of bonds, endowment certificates or other documents, whereby in return for one or more premiums paid to the provident society, the payment is insured of a sum or series of sums, at a future date or dates, whether fixed beforehand or determined by chance

19 **Rules of Provident Societies**—(1) Every provident society shall in addition to the matters specified in clauses (*a*) to (*o*) of sub section (1) of section 74 of the Act set forth in its rules—

(i) that where a policy is applied for on the life of a person other than the person paying the premiums on such policy, the name of the person paying the premiums and his relationship to the life insured shall be inserted in the policy, the policy shall not be issued till the life insured (or if he be not of age his legal guardian) has given his consent in writing to the

being effected, and the amount secured shall not be excessive having regard to the interest of the person paying the premium in the life insured ,

(ii) the disqualifications, if any, due to change of occupation, read out or other specified cause,

(iii) the terms upon which any policy may be kept in force for a reduced benefit without liability to payment of further premiums ,

(iv) a statement to the effect that all policies issued after the commencement of the Act shall have clearly set out therein the matters referred to in clauses (*f*), (*g*), (*h*), (*i*) and (*j*) of sub-section (1) of section 74 of the Act and those referred to in clauses (*ii*) and (*iii*) above,

(v) the method of voting at the meetings of the managing body and the number constituting a quorum,

(vi) a statement that no dividend shall be declared except as a result of a valuation under sub-section (1) of section 81,

(vii) a statement that no bonus other than an interim bonus shall be declared except as a result of a valuation made in accordance with sub-section (1) of section 81, that the rate of such bonus shall not exceed that recommended by the actuary, and that no interim bonus shall be declared at a rate exceeding that approved by an actuary, and

(viii) a statement that the paid-up capital shall not be treated as part of the society's assets for the purpose of showing a divisible surplus at the time of any investigation made under sub-section (1) of section 81 and that where assets of the nature of organisation or preliminary expenses exceed the paid-up capital the fund shall be diminished by the amount of such excess for the purpose of ascertaining the financial condition of the society

(2) All rules made by a Local or Provincial Government under section 24 of the Provident Insurance Societies Act, 1912, are hereby repealed

19A Every provident society shall, commencing from a date not later than the 1st January, 1943 maintain at its principal office in the States the following registers in the forms specified below or as near thereto as possible provided the information to be shown is not reduced thereby in respect of all its transactions subsisting on or after that date, namely,—

(i) A register of members (but not including membership merely by virtue of being a policy holder), proprietors and shareholders in Form VI A

(ii) A register of directors manager, secretary and other officers in Form VI B

(iii) A proposal register in Form VI C

(iv) A register of policies in Form VI-D in respect of all policies issued from a date not later than 1st January, 1943 [Separate registers shall be maintained for each contingency

specified in or prescribed under sub section (1) of section 65 of the Act in respect of which the society carries on business)

(v) A premium register in Form VI-E

(vi) A lapse register showing the details in respect of each policy which is treated by the society as having lapsed in Form VI-F

(vii) A register of claims not including annuities in Form VI G

(viii) A register of annuity payments in Form VI-H

(ix) A register of agents in Form VI-I

Provided that—

(a) any register printed after this rule is made and purporting to contain the information specified in any of the registers prescribed by this rule shall be in the Form prescribed therefor,

(b) if any of the registers required to be kept in accordance with section 79 of the Act, as it stood before the commencement of the Insurance (Amendment) Act, 1941, is not kept, or if any of the registers so kept is exhausted, the society shall maintain forthwith the corresponding register or registers prescribed by this rule,

(c) if no registers are maintained corresponding to the registers prescribed by clauses (iii), (v) and (vi) of this rule, the society shall, commencing from a date not later than 1st April, 1942, maintain the registers prescribed by these clauses,

(d) it shall not be necessary to show the name of the life insured in addition to the policy number in the register in Form VI-D, VI E VI F VI-G or VI H, if the register concerned is prepared by mechanical means

20 **Forms of accounts and statements**—(1) The revenue account and balance sheet of a provident society shall be prepared in accordance with Forms VII and VIII respectively, and in their completion regard shall be had to the notes appended thereto

(2) If it so desires a provident society may submit a profit and loss account in addition to a revenue account and balance sheet

(3) The statements required under clause (a) (i) and (b) of sub-section (2) of section 80 of the Act shall be prepared in accordance with Forms IX and X respectively

21 **Actuarial reports**—(1) Whenever an investigation is made into the financial condition of a provident society under section 81 of the Act the report of the actuary—

(a) shall so far as practicable, be prepared in accordance with the regulations and requirements contained in the Fourth Schedule to the Act except that it shall not be necessary to supply a consolidated revenue account in Form G, a statement in Form DDD of additions to and deductions from policies and a statement in Form DDDD of particulars of policies forfeited or lapsed,

(*b*) shall contain in the appropriate places the information required in clauses (*a*) to (*e*) of sub-section (2) of section 81 ,

(*c*) shall state the proportion of the renewal premium income spent in payment of commission and other expenses in each year during the period since the last investigation after allowing as the cost of the new business of the year, 7½ per cent of single premiums and 90 per cent of first year's premiums falling due in the year after deduction of those unpaid under policies allowed to lapse in the year ,

(*d*) shall state whether the actuary has taken steps to prevent the policy reserve values from being less than the minimum surrender values ,

(*e*) shall have appended to it a certificate as prescribed in sub-section (2) of section 81 , and

(*f*) shall contain a statement that in no case where a policy has been written off as a lapse does there exist any further liability actual or contingent

(2) Where an investigation into the financial condition of a provident society is made as at a date other than the expiration of the year of account the accounts for the period since the expiration of the last year of account and the balance sheet as at the date at which the investigation is made shall be prepared and audited in the manner provided by the Act and these rules

22 **Signatures to returns furnished by provident societies**—Every return furnished to the Controller of Insurance under sub-section (2) of section 82 of the Act shall be signed in accordance with the provisions of sub section (2) of section 15 of the Act

23 **Notices under section 92 (6)**—The notices referred to in sub-section (6) of section 92 of the Act shall be sent by post to the last known addresses of the persons concerned as recorded in the society's books, and certificates of posting shall be obtained therefor

Provided that the liquidator may at his discretion send all or any of the notices by registered post

23A **Security from liquidator**—Where a liquidator is appointed by the Controller under the provisions of sub-section (1) of section 90 of the Act, the Controller may demand from the liquidator such security and in such form as he may determine

Fees

24 **Fees under the Act and the manner of collection**—(1) The fee for registration under section 3 of the Act shall be five hundred rupees for each of the following classes of insurance business done or to be done by the insurer, namely,—

(i) life insurance,

(ii) fire insurance

(iii) marine insurance,

(iv) miscellaneous insurance

Provided that where the business done or to be done is marine insurance only and relates exclusively to country craft or cargo of country craft or both the fee for registration shall be two hundred and fifty rupees

Provided further that where an insurer who is already registered for carrying on marine insurance business relating exclusively to country craft or cargo of country craft or both and no other class of insurance business, subsequently applies for registration for carrying on the entire class of marine insurance or any other class of insurance business specified above the fee for such registration shall be two hundred and fifty rupees *plus* the fee for registration of the class, if any, of insurance business other than marine insurance business for which registration is sought

(1A) The fee for issue of a duplicate certificate of registration under sub-section (7) of section 3 shall be ten rupees

(2) The fee for renewal of registration under section 3A of the Act for each class of insurance business for which the insurer is registered shall be—

(*i*) where the total premium income including annuity considerations, if any, as shown in the revenue account for that class of insurance business prepared under the Act for the calendar year preceding the one in which the application for renewal of registration is required to be made does not exceed one lakh of rupees, fifty rupees ,

(*ii*) where such premium income exceeds one lakh of rupees but does not exceed two lakhs of rupees, one hundred rupees ,

(*iii*) where such premium income exceeds two lakhs of rupees but does not exceed four lakhs of rupees, one hundred and fifty rupees ,

(*iv*) where such premium income exceeds four lakhs of rupees but does not exceed six lakhs of rupees two hundred and fifty rupees ,

(*v*) where such premium income exceeds six lakhs of rupees but does not exceed ten lakhs of rupees, three hundred and seventy-five rupees ,

(*vi*) where such premium income exceeds ten lakhs of rupees, five hundred rupees

Provided that the fees for renewal of registration payable in any one year by an insurer in respect of his insurance business other than life insurance business shall not exceed one thousand and five hundred rupees

Provided further that in relation to insurers who are required to furnish returns in accordance with sub-section (2) of section 16 of the Act the reference to the calendar year in this sub-rule shall be construed as a reference to either the period covered by the revenue account furnished under clause (*b*) of the said sub-section or the calendar year

(3) The fee for registration under section 70 of the Act shall be two hundred rupees

(3A) The fee for issue of a duplicate certificate of registration under sub-section (7) of section 70 shall be three rupees

(4) The fee for renewal of registration under section 70A of the Act shall be fifty rupees where the total gross premium income including annuity considerations, admission fees and other fees, if any, as shown in the revenue account last furnished under the Act was less than fifty thousand rupees per annum or one hundred rupees in all other cases

(5) The fee payable for obtaining copies under section 119 of the Act shall be two rupees for each foolscap page or part of a page of the copy, the copy being prepared with reasonable margin and spacing

(6) Any fee specified in this rule or payable under sub-section (1) of section 20 of the Act shall be paid into the Bank or where there is no office of the Bank, into the Imperial Bank of India acting as the agent of that Bank or into any Government Treasury for credit under the head "XXI—Miscellaneous Departments—Fees realised under the Insurance Act, 1938", and the receipt shall be sent along with the relevant application

24A Fees payable on referring disputed claims to Controller—(1) The fee payable at the time of referring to the Controller a dispute relating to the settlement of a claim on a policy of life insurance under sub-section (1) of section 47A of the Act is rupees ten or one rupee for each hundred rupees or part thereof of the amount of the claim (including any profit or bonus) whichever is greater

(2) Any fee specified in this rule shall be paid in the form of 'Government of India Insurance' stamps available on payment from a Government Treasury and the stamp shall be affixed on the application or letter referring the dispute to the Controller and superscribed with the signature of the claimant

(3) Where in respect of any fee specified in this rule 'Government of India Insurance' stamps of a greater value than is necessary have been inadvertently used or where the application or letter referring a dispute to the Controller bearing such stamps is not entertained by the Controller under section 47A of the Act for any reason, refund may be made of the excess or the necessary fee, or of the value of the stamps affixed, as the case may be

24B Fees payable to the Councils—(1) The fees payable by a member or associate member who is an insurer carrying on life insurance business to the Life Insurance Council in each calendar year shall be [illegible] rupees for every lakh of rupees or part thereof of his gross direct premium income from life insurance business in India in the last but one preceding calendar year subject to a maximum of one thousand and two hundred and fifty rupees

(2) The fees payable by a member or associate member who is an insurer carrying on general insurance business to the General Insurance Council in each calendar year shall be twenty five rupees for every ten thousand rupees or part thereof of his gross direct premium income in India in general insurance business in the last but one preceding calendar year

(3) Any fee specified in this rule shall be paid by means of a crossed bank draft on the Simla Branch of the Imperial Bank of India drawn in favour of the Secretary of the Council concerned

Miscellaneous

25 Additional particulars to be given by actuary—An actuary investigating the financial condition of an insurer shall in addition to the reports, statements and abstracts required to be furnished under section 13, clause (c) of sub-section (2) of section 16 of the Act, furnish statements with regard to the following matters

(a) whether he has taken steps to prevent the policy reserve value from being less than the minimum surrender values,

(*b*) the proportion of renewal premium income spent in payment of commission and other expenses in each year during the period since the last investigation after allowing, as the cost of the new business of the year, seven and half per cent of single premiums including consideration for annuities granted and seven and half per cent for each year of the maximum premium paying period, but not exceeding ninety per cent in all, of first year's premium falling due in the year after deduction of those unpaid under policies allowed to lapse in the year

Provided that in respect of any year or accounting period ending on a date earlier than the 31st day of December, 1946, the allowance out of first year's premiums as the cost of the new business shall be ninety per cent irrespective of the premium-paying period

Explanation 1—Where the maximum premium-paying period includes a fraction of a year, such fraction shall be ignored

Explanation 2—In the case of a whole life policy with premium payable throughout the duration of the policy the maximum premium-paying period shall be assumed to be twelve years

25A The conditions with which a Mutual Insurance Company shall comply or the purposes of sub section (2) of section 4 are that such company shall confine its activities to members of any one profession only or to employees under one employer only and that if any question arises whether or not a particular group of persons belongs to any one profession or is employed under any one employer, the Controller of Insurance shall decide the question and his decision shall be final

26 **Form of declaration under section 16 (2) (d)**—The declaration referred to in clause (*d*) of sub-section (2) of section 16 of the Act shall be in Form XI and one copy of the declaration shall be signed in the manner described in sub-section (2) of section 15 of the Act

27 **Returns in respect of dividing insurance business**—Every insurer so long as he has policies on the dividing principle remaining in force, shall submit all returns required under the Act or these rules in respect of such business separately from the corresponding returns in respect of other insurance business and along with the revenue account shall also furnish in respect of such business returns in Forms XII, XIII and XIV respectively Four copies shall be submitted of each of these three last mentioned returns, of which one of each shall be signed in the manner described in sub section (2) of section 15 of the Act

28 The sub-clauses of miscellaneous insurance business in respect of each of which a separate account of receipts and payments is to be kept as required under sub section (1) of section 10 of the Act on and after the 1st January 1943, shall be—

(1) Capital Redemption insurance business

(2) Continuous Disability insurance business

(3) Employer's Liability insurance business

(4) The business of insuring the payment on the happening of each of the contingencies (*a*) birth, (*b*) marriage, and (*c*) failure each contingency to constitute a separate business

contingencies are combined in a single contract, but not being business comprising insurance contracts which are terminable by the insurer at intervals not exceeding twelve months and under which if a claim arises, the insurer's liability to pay benefit ceases within one year from the date on which the claim arose

29 For the purposes of the Act, the business of an insurer shall be deemed to be transacted—

(*a*) in India, if the insurance business, wherever effected, relates to any property situate in India or to any vessel or aircraft registered in India,

(*b*) in India or the States, according as the premiums in respect of those transactions are ordinarily paid in India or the States, as the case may be

Provided that if any question arises whether any premiums are ordinarily paid inside or outside the States of India the Controller shall decide the question and his decision shall be final

30 **Activities of Insurers**—(1) An insurer may do all acts necessary for making investments permissible under the Act for the protection of such investments and for the realisation of such investments and may in that connection take over and administer mortgaged property until a suitable occasion arises for its disposal

(2) An insurer carrying on general insurance business may act as the manager in charge of a branch office of another insurer in respect of general insurance business

31 **Statement of emoluments**—The statement of emoluments exceeding Rs 5,000 to be furnished under sub section (2) of section 31 shall be in Form XV

32 **Payment where nominee is a minor**—(1) The holder of a policy of life insurance may, in any case where the nominee is a minor, appoint any person to receive the money secured by the policy in the event of his death during the minority of the nominee, and communicate such appointment to the insurer concerned by forwarding the documents relating to such appointment which should be endorsed by the appointee to show his consent thereto

(2) Any such appointment in order to be effectual shall unless incorporated in the text of the policy itself be made by an endorsement on the policy

(3) Any such appointment may at any time before the policy matures for payment be cancelled or changed by an endorsement or further endorsement as the case may be and communicated to the insurer

33 **Summary of Balance-sheet and Revenue Account**—The summary to be published in pursuance of section 100 of the Act shall be in Form XVI

Reinsurance Advisory Committee

34 **Term of office**—The term of office of the non-official members of the Advisory Committee constituted under sub-section (1) of section 101B of the Act (hereafter in this rule and rules 35 to 38 referred to as the Committee) shall be two years from the date of their nomination The official members

of the Committee shall hold office during the pleasure of the Central Government All outgoing members shall be eligible for re-nomination

35 **Resignation and filling of casual vacancies**—(1) Any member of the Committee may resign his membership of the Committee by notice in writing addressed to the Secretary to Government of India, Ministry of Finance (Department of Economic Affairs), to that effect and such resignation shall take effect from the date on which it is accepted by the Central Government

(2) Casual vacancies in the Committee whether caused by resignation, death or otherwise, shall be filled by nomination by the Central Government and any person, other than an official, so nominated to fill the vacancy shall hold office until the expiry of the term of office of the member in whose place he is nominated

36 **Secretary**—The Central Government may appoint a Secretary to the Committee for the purpose of performing such functions as are assigned to him by these rules or as may be assigned to him by the Chairman of the Committee

37 **Procedure for the conduct of business, etc of the Committee**—

(1) *Meetings of the Committee*—Meetings of the Committee may be held at such places and at such times as may be decided by the Chairman of the Committee

(2) *Notice of meeting*—Notice of any meeting of the Committee shall be sent by the Secretary of the Committee to every member at least seven days before the date of the meeting The notice shall state briefly the business to be transacted at the meeting

(3) *Quorum for the meeting*—Three members shall constitute quorum for a meeting

(4) *Adjournment of a meeting*—If the requisite quorum is not available within half an hour of the appointed time for a meeting the Chairman or in his absence any person nominated by him under sub rule (5) may adjourn the meeting to such date and time as he may decide

(5) *Chairman to preside at meeting*—The Chairman shall preside at all meetings of the Committee If the Chairman is unable to attend, he may nominate a member of the Committee to preside in his absence

(6) *Decision at a meeting*—All matters required to be decided by the Committee shall be decided by the majority of the votes of the members present The voting shall be by show of hands

(7) *Decision by circulation*—Any matter for consideration of the Committee may at the discretion of the Chairman be decided by circulation among the members as an alternative to convening a meeting for the purpose

Provided that the decision arrived at shall not be valid unless at least three members express an opinion on that matter

(8) *Minutes*—The minutes of the proceedings of every meeting shall be circulated to the members of the Committee The minutes shall be confirmed at the next meeting of the Committee and shall thereafter be recorded in a Minute Book and signed by the Chairman

38 **Allowances payable to members of the Advisory Committee**—(1) Every non-official member shall be entitled for attending meetings of the Committee to travelling and other allowances as under

(i) Travelling allowance for journeys from the usual place of residence or the place of commencement of the journey to the place of the meeting and the return journey to the place of commencement of the journey or the usual place of residence, whichever is shorter in each case, at the maximum rate for the time being admissible to a Central Government servant of the first grade Subject to the foregoing, the members shall be entitled to travel either by air conditioned class or by air

(ii) Daily allowance at the maximum rate for the time being admissible to Central Government servant of the first grade at the place of the meeting for the days on which the meeting is held and in respect of one day previous to the commencement of the meeting and one day after the meeting if the member actually arrives on or before and leaves on or after the respective days

(2) The travelling allowances and daily allowances of an official member shall be governed by the rules for the time being applicable to him for journeys performed on official duty

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SCHEDULE

FORM I

(*See* Rule 5)

RESERVE BANK OF INDIA

To

The Manager,

Reserve Bank of India,

London, 19

This is to inform you that the have this day deposited the undermentioned securities

Manager

Number	Loan	Face value (in sterling)	Market value (ex-dividend in sterling)	Interest of dividend paid up to	Remarks
Total					

FORM II

(*See* Rule 5)

No LT / ST

RESERVE BANK OF INDIA

SECURITIES DEPARTMENT

19

Certified that the . have made the undernoted deposits in terms of the Insurance Act, 1938

Manager

	Cash	Approved securities			Remarks
		Loan	Face value	Market value	
1	2	3	4	5	6
Total					

Grand Total of columns 2 and 5 Rs

FORM III

(*See* Rule 5)

No Section

RESERVE BANK OF INDIA

SECURITIES DEPARTMENT

19

Statement showing the particulars of deposits held on behalf of the under Section of the Insurance Act, 1938

Loan	Existing deposits (excluding deposits withdrawn)		New deposits received on		Total		(Sterling deposits have been converted at 1s 6d)
	Face value	Book value	Face value	Value	Face value	Book value	
Total Securities							
Cash							
GRAND TOTAL							

Certified that the above agrees with the entries in the books maintained by the Bank

To

The Controller of Insurance,
Department of Insurance, Simla

FORM IV

(*See* Rule 10)

List of deposits under the Insurance Act, 1938, held in the custody of the Reserve Bank of India on the 31st December 19

Name of depositor	Loan or nature of deposits	Amount	Total face value	Cash	Total book value of securities and cash

FORM IV-A

[*See* Rule *No* 10 (*e*) (1)]

Return of investments of the Controlled Fund of the Company Limited as at 19 [*See section 28A* (1).]

(*See the note appended to the form*)

Part A [Investment approved under section 27A (1) of the Insurance Act]

(1) Government securities and other securities charged on the revenues of the Central Government or of the Government of a Part A State or guaranteed fully as regards principal and interest by the Central Government or the Government of any Part A State and securities issued or guaranteed fully as regards principal and interest by the Government of a Part B State and specified as approved securities by the Central Government

Full description of the security	Date of purchase	Date of maturity	Rate of interest	Face value	Book value	Market value	Remarks

(2) Approved securities other than those referred to in item (1) above [Section 2 (3)]

Full description of the security	Date of purchase	Date of maturity	Rate of interest	Face value	Book value	Market value	Remarks

(3) Securities guaranteed fully as regards principal and interest by a Provincial Government in Pakistan or charged on the revenues of any part of that Dominion and debentures of other securities for money issued by or on behalf of the Port of Karachi and satisfying the requirements of Rule 10A of the Insurance Rules.

Full description of the security	Date of purchase	Date of maturity	Rate of interest	Face value	Book value	Market value	Remarks

(4) Securities issued by the Government of any country outside India

Full description of the security indicating the name of the country	Date of purchase	Date of maturity	Rate of interest	Face value	Book value	Market value	Remarks

(5) Debentures or other securities for money issued with the permission of the State Government by any Municipality in a State

[*See* Section 27A (1) (c)]

Full description of the debenture or security	Date of purchase	Date of maturity	Rate of interest	Face value	Book value	Market value	Remarks

(6) Debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central Government or a State Government or by any authority or body constituted by any Central Act or Act of a State Legislature

[*See* Section 27A(1) (*d*)]

Name of the housing or building scheme	Name of the Govt approving the scheme or the Act under which the scheme is constituted	Date of investment	Maturity date of the debentures or security	Rate of interest	Face value	Book value	Market value	Remarks

(7) First mortgages on immovable property situated in India under any housing or building scheme of the insurer approved by the Central or a State Government

[*See* Section 27A(1) (*e*)]

Location of the property	Value of the property (date of last valuation of property)	Amount advanced	Date of advance	Rate of interest	Name of the State approving the scheme and date of approval	Amount outstanding		Remarks
						Principal	Interest*	

*To be stated if outstanding for more than *one* year

(8) Debentures secured by a first charge on any immovable property, plant or equipment, of any company which has paid interest in full for five

years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by the company

(*See* Section 27A(1) (*f*)]

Name of the company	Date of issue of debentures	Date of purchase by the insurer	Whether the charge is on property, plant or equipment	Rate of interest	Face value	Book value	Market value	Remarks

(9) Debentures secured by a first charge on any immovable property, plant or equipment of any company where, either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of the debentures

(*See* Section 27A(1) (*g*)]

Name of the company	Date of purchase	Date of maturity of the debentures	Rate of interest	Face value	Book value	Market value	Remarks

(10) First Debentures secured by a floating charge on all the assets of any Company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five years out of the six or seven years immediately preceding

[*See* Section 27A(1) (*h*)]

Name of the company	Date of purchase by the insurer	Date of maturity of debentures	Rate of interest	Face value	Book value	Market value	Remarks

(11) Preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding

(*See* Section 27A(1) (*i*)]

Name of the Company	Date of purchase by the insurer	Rate of interest	Face value	Book value	Market value	Remarks

(12) Preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up

[*See* Section 27A(1) (*j*)]

Name of the company	Date of purchase	Rate of interest	Face value	Book value	Market value	Remarks

(13) Shares of any company guaranteed by another company such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding

[*See* Section 27A(1) (*k*)]

Name of the company	Name of the guaranteeing company	Date of purchase	Face value	Book value	Market value	Whether proviso to Sec 27A (1) (*k*) complied with	Remarks

(14) Shares of any company on which dividends of not less than four per cent including bonus have been paid for seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding

[*See* Section 27A(1) (*l*)]

Name of the Company	Date of purchase	Face value	Book value	Market value	Remarks

(15) First mortgages on immovable property situated in the States or in any country where the insurer is transacting insurance business

[*See* Section 27A (1) (*m*)]

Situation of the property and name of the owner	Whether land or buildings or both	Whether land is leasehold or freehold	Outstanding period of the mortgage if property is leasehold	Outstanding period term of the lease, if the property is leasehold	Type of mortgage	Date of mortgag	Value of the land

Value of the buildings	Date of last valuation of the property and name of the valuer	Amount advanced on the mortgage		Rate of interest	Outstanding amount		Remarks
		Land	Buildings		Principal	Interest	

(16) Immovable Property situated in the States or in any country where the Insurer is transacting insurance business

[*See* Section 27A (1) (*n*)]

Situation of the property	Land or building or both	Whether land is leasehold or freehold	Date of purchase	Amount invested by the insurer	Net annual rental value of the property i e net of taxes, maintenance, depreciation, etc	Whether free from all encumbrances	Remarks

(17) Loans on life insurance policies within their surrender value issued by the insurer or by another insurer whose business he has taken over and in respect of which business he has assumed liability

[*See* Section 27A (1) (*o*)]

Amount of loan outstanding on the date	Advance under automatic non forfeiture scheme of the insurer	Remarks

(18) Life Interests and Loans on Life interests

[*See* Section 27A (1) (*o*) and (*p*)]

Date of purchase or grant of loan on life interest	Value of the life interest	Purchase price or amount of loan	Whether the transaction is covered by any life policy	Whether the value is certified by an actuary	Remarks

(19) Fixed deposits with Banks included in the Second Schedule to the Reserve Bank of India Act, 1934, or Co operative Societies registered under the Indian Co-operative Societies Act, 1912 or any other law for the time being in force the primary object of which is to finance co-operative societies similarly registered

[*See* Section 27A(1) (*q*)]

Name of the bank or Co-operative Society with addresses	Date of deposit	Rate of interest	Period of deposit	Amount of deposit	Whether section 27A (9) satisfied	Whether proviso to section 27A (9) attracted	Remarks

(20) Shares and Debentures of Co-operative Societies registered under the Indian Co-operative Societies Act, 1912, or any other law for the time being in force

[*See* Section 27A(1) (*r*)]

Name and address of society	Date of purchase	Date of maturity of debentures	SHARES			DEBENTURES			Remarks
			Face value	Book value	Market value	Face value	Book alne	Market valne	

(21) Other investments notified under clause (*s*) of sub-section (1) of section 27A

Description of the investment	Date of purchase	Face value	Book value	Market value	Interest or dividend paid last	Remarks

PART B

(Relating to investments held invested under section 27A(2) of the Insurance Act in respect of which a resolution has been adopted in terms of that section)

Rs

(1) 15 per cent of the sum referred to in sub section (1) of section 27 of the Insurance Act estimated as at the date of this return

(2) Particulars of investments

Name of the company whose shares or debentures are held by the insurer and description of investments	Date of purchase	Date of maturity	Face value	Book value	Market value	Names of Directors of the insurer interested in the investmen	Extent of interest of Directors	Whether section 27A(3), (4) and (5) satisfied	Remarks
TOTAL									

PART C

Particulars of investments other than those shown in Part A, Part B and Part D and not satisfying the requirements of sub-sections (1) and (2) but complying with the requirements of sub-sections (3) and (4) of section 27A

Full description of the investment (including the name of the company)	Date of investment	Face value	Book value	Market value	Names of the Directors of the Insurer interested in the investment	Extent of interest of Directors	Remarks

(18) Life Interests and Loans on Life interests

[*See* Section 27A (1) (*o*) and (*p*)]

Date of purchase or grant of loan on life interest	Value of the life interest	Purchase price or amount of loan	Whether the transaction is covered by any life policy	Whether the value is certified by an actuary	Remarks

(19) Fixed deposits with Banks included in the Second Schedule to the Reserve Bank of India Act, 1934, or Co operative Societies registered under the Indian Co-operative Societies Act, 1912 or any other law for the time being in force the primary object of which is to finance co-operative societies similarly registered

[*See* Section 27A(1) (*q*)]

Name of the bank or Co-operative Society with addresses	Date of deposit	Rate of interest	Period of deposit	Amount of deposit	Whether section 27A (9) satisfied	Whether proviso to section 27A (9) attracted	Remarks

(20) Shares and Debentures of Co-operative Societies registered under the Indian Co-operative Societies Act, 1912, or any other law for the time being in force

[*See* Section 27A(1) (*r*)]

Name and address of society	Date of purchase	Date of maturity of debentures	SHARES			DEBENTURES			Remarks
			Face value	Book value	Market value	Face value	Book value	Market value	

(21) Other investments notified under clause (*s*) of sub-section (1) of section 27A

Description of the investment	Date of purchase	Face value	Book value	Market value	Interest or dividend paid last	Remarks

PART B

(*Relating to investments held invested under section 27A(2) of the Insurance Act in respect of which a resolution has been adopted in terms of that section*)

Rs

(1) 15 per cent of the sum referred to in sub section (1) of section 27 of the Insurance Act estimated as at the date of this return

(2) Particulars of investments

Name of the company whose shares or debentures are held by the insurer and description of investments	Date of purchase	Date of maturity	Face value	Book value	Market value	Names of Directors of the insurer interested in the investmen	Extent of interest of Directors	Whether section 27A(3), (4) and (5) satisfied	Remarks
TOTAL									

PART C

Particulars of investments other than those shown in Part A, Part B and Part D and not satisfying the requirements of sub-sections (1) and (2) but complying with the requirements of sub-sections (3) and (4) of section 27A

Full description of the investment (including the name of the company)	Date of investment	Face value	Book value	Market value	Names of the Directors of the Insurer interested in the investment	Extent of interest of Directors	Remarks

Particulars of investments not satisfying the requirements of sub sections (3) and (4) of section 27A

I

Full description of the investment (including the name of the company in which invested)	Total value of the investment	Amount held invested in excess of the requirements of				Date of investment	Names of the Directors of the insurer who are interested in the investment	Extent of each Director's interest in the company	If the investment is shown in Part A or Part B of the statement indicate it by cross reference	Remarks
		Sub-section (3)		Sub-section (4)						
		Clause (a)	Clause (b)	Clause (a)	Clause (b)					

II

Particulars of investments not satisfying the requirements of sub-section (5) of section 27A

Name of the company	Date of investment	Face value	Book value	Market value	Names of Directors of insurer interested in the private company	Extent of Directors' interest	Remarks

I hereby certify that the particulars furnished in the return are true and complete to my knowledge

Date *Principal Officer*

NOTE TO FORM NO IV-A

I (*a*) Market value of securities, debentures, shares, etc, should be ascertained from published quotations Where published quotations are not available, it should be stated in the remarks column how the market values have been arrived at

(*b*) If 'accrued interest' has been added to the market value, it should be so stated in the remarks column

(*c*) In the case of shares and debentures of companies, the location of the companies should also be stated

(*d*) In the case of mortgages of property and properties owned by the insurer, location of each property should be separately stated

(e) In case of investments made on and after the 19th January, 1950, the date of purchase should be given

II In respect of investments in Part A of the statement, investments which were approved at the time of the last statement but ceased to be so subsequently should be distinctly marked by double asterisks

III Investments held in deposit under section 7 or 98 of the Act should also be included in the return

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FORM No IV-B

[*See* Rule No 10 (e) (2)]

Return showing all the changes that occurred in the investments of the Controlled Fund of Insurance Company Ltd during the quarter ending 19

[*See* Section 28A(2)]

(1) Purchases during the quarter ending 19 .

Full description of the investment	Date of purchase	Purchase price	Face value	Book value	Market value	State whether the investment complies with Sec 27A(1)	State whether the additions to the existing holding if any, would attract Sec 27A(3) or (4)

(2) Sales during the quarter ending 19

Full description of the investment	Date of sale	Sale price	Amount realised by the sale	Face value of investment sold	Book value of the investment sold	Date of purchase of the investment now sold*	Purchase price of the investment now sold*

*To be given in the case of investments made after 19th January 1950 If made before the said date it may be so stated in the columns Also Note I (a) to I(d) on Form IVA

FORM IV-C

[*See* Rule 14 (7)]

Instrument of Proxy

Insurance Company, Limited

I of in the District of

being a holder of policy/policies bearing the number/numbers issued by the Insurance Company Limited hereby appoint of who is also a holder of policy/policies bearing the number/numbers issued by the above mentioned company or in case the said policy holder fails to attend such meeting, I appoint of who is also a holder of policy/policies bearing the number/numbers issued by the above mentioned company* as my proxy to vote for me and on my behalf at the meeting of the company to be held for the election of policy holders' directors on the day of 19 and at any adjournment thereof

Signed this day of 19

Signature

FORM V

[*See* Rule 16A of the Insurance Rules, 1939]

Application for a licence to Act as an Insurance Agent

To

The Controller of Insurance

Department of Insurance, Simla

Dear Sir,

I request that a licence to act as an insurance agent may be granted to me

*2 I *hereby declare that*—

(i) I have not been found to be of unsound mind by a court of competent jurisdiction ,

(ii) I have not been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction , and

(iii) I have not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer , and

3 I also declare that the particulars given below are true and that the licence for which I hereby apply will be used only by myself for soliciting or procuring insurance busine s

*Similarly for one further proxy if both the first mentioned proxies fail to attend

(1) Full name	Mr* (In Block Letters) (1) Mrs * Miss*
(2) *Father's/Husband's name	(2)
(3) Full address	(3)
(4) Date of birth of the applicant in Christian Era	(4)
(5) If you ever held a Licence, state No and date of expiry, otherwise say 'Nil'	(5)
(6) If the applicant holds a certificate to act as a Principal Agent and/or a Chief Agent and/or a Special Agent, state No and date of expiry of the certificate or certificates held If no certificate is held say Nil If any such certificate has been applied for, state the date of the application	(6)

*Strike out portion not required

Dated the 19

Government of India Insurance Stamps for Rs 5

Yours faithfully,

(Signature of applicant)

(See Notes on reverse)

Not Transferable

FORM VB

Government of India
Department of Insurance
Licence No

[*See* Rule 16A of the Insurance Rules, 1939]

Licence to act as an Insurance Agent under Part II of the Insurance Act, 1938

To be filled in by the applicant in Block Letters } Mr / Mrs / Miss Address

having paid the prescribed fee and having made the necessary declaration is hereby authorised to act as an Insurance Agent for three years from

Simla, dated the 19

Signature of Licence-holder Controller of Insurance

This licence is not valid unless it bears a facsimile of the sigature of the Controller of Insurance and the initials of a person authorised by him in this behalf and the signature of the licence-holder The latter should put his signature as soon as licence is received

(See Notes on reverse)

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance Act, 1938, which provides that whoever in any document required for the purposes of any of the provisions of that Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both

2 A licence can be granted to an individual only and not to a firm or corporate or unincorporate body

3 An individual can apply for only one licence which will entitle him to solicit or procure insurance business of any class and to act as an insurance agent for any insurer

4 The application should be filled in, as far as possible, in English language

5 Any correction or alteration made in any answer to the questions in the application should be initialed by the applicant

6 An applicant must be at least 18 years of age on the date of submission of the application In the case of an applicant declaring his age as 18 years, the exact date of birth should be given and in all other cases, either the exact date of birth or failing that the year of birth should be stated against item 4 of the application If required the applicant shall furnish proof of age

7 Payment in cash or by money order, cheque, postal order, postage stamp or Bank draft is not accepted and will be returned at applicant's cost

8 No aknowledgment of this application will be sent If one is required, the application should be sent by registered post (acknowledgment due)

Notes

1 If it is desired to renew this licence for a further period—the procedure laid down in rules 16 and 16A of the Insurance Rules 1939, shall be followed and an application for renewal should reach the Controller of Insurance before the licence expires In this connection attention is also invited to the provisos to Rule 16A of the Insurance Rules, 1939

2. This licence authorises the licence holder to act as an agent for any registered insurer and for any class of insurance business and therefore no identifying mark or note of any description by which the identity of an insurer might be established should be placed on the licence

3 No correction in this licence will be valid unless initialed by the Controller of Insurance or a person authorised by him in this behalf

FORM V-A

[*See* Rule 16A of the Insurance Rules, 1939]

Application for renewal of a Licence to act as Insurance Agent

(In Block letters) From

Mr *

Name of Insurance Agent Mrs *

Miss*

Full address . . . . . .

To

The Controller of Insurance,

Department of Insurance, Simla

Dear Sir,

Licence No Date of expiry

I request that the above licence may be renewed for a further period of three years

*2 I declare that since the date of my last application for a licence—

(i) I have not been found to be of unsound mind by a court of competent jurisdiction,

(ii) I have not been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction,

(iii) I have not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer, and

(iv) My licence has not been cancelled at any time by the Controller of Insurance,

3 * I hold/have applied for a certificate to act as a { Principal Agent No P A expiring on . / Chief Agent No C A expiring on . / Special Agent No S A expiring on .

4 * I neither hold nor have applied for certificate to act as a { Principal Agent / Chief Agent / Special Agent

5 I also declare that the facts stated herein are true and that the licence for which I hereby apply will be used only by myself for soliciting or procuring insurance business

*Strike out portions not required

Dated the 19

Government of India Insurance Stamp *vide* Note 5

Yours faithfully,

Signature of applicant

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance Act, 1938, which provides that whoever in any document required for the purposes of any of the provisions of that Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both

2 The name and the licence No given in the application are identical with those shown in the last licence held If there is any subsequent change in the name, the reasons for the same should be stated furnishing documentary evidence for the same

3 Any correction or alteration made in the application should be initialed by the applicant

4 The application should be filled in, as far as possible, in the English language

5 The application should reach the Controller of Insurance before the expiry of the last licence held by the applicant but not more than three months before such expiry and "Government of India Insurance" Stamps for Rs 5 should be affixed to it If the application does not reach the Controller of Insurance at least 30 days before the date on which the last licence ceases to be in force "Government of India Insurance" Stamp to the value of Rs 2 should be affixed to the application by way of penalty In this connection also refer to the provisos to Rule 16A of the Insurance Rules, 1939

6 Payment in cash or by money order, cheque, postal order, postage stamp or bank draft is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one is required, the application should be sent by registered post (acknowledgment due)

Not Transferable

FORM V-B

Government of India

Department of Insurance

To be filled in by the applicant } Licence No

[*See* Rule 16A of the Insurance Rules, 1939]

Licence to act as an Insurance Agent under Part II of the Insurance Act, 1938

To be filled in by the applicant in Block Letters

Mr
Mrs
Miss

Address . . . . .

having paid the prescribed fee and having made the necessary declaration is hereby authorised to act as an Insurance Agent for three years from

Simla, dated the 19

Signature of Licence holder . Controller of Insurance

This licence is not valid unless it bears a facsimile of the signature of the Controller of Insurance and the initials of a person authorised by him in this behalf and the signature of the licence-holder The latter should put his signature as soon as the licence is received

Notes

1 If it is desired to renew this licence for a further period, the procedure laid down in rules 16 and 16A of the Insurance Rules, 1939, shall be followed, and an application for renewal should reach the Controller of Insurance before the licence expires In this connection attention is also invited to the provisos to Rule 16A of the Insurance Rules, 1939

2 This licence authorises the licence-holder to act as an agent for any registered insurer and for any class of insurance business, and therefore no identifying mark or note of any description by which the identity of an insurer might be established should be placed on the licence

3 No correction in this licence will be valid unless initialed by the Controller of Insurance or a person authorised by him in this behalf

FORM V-P

Application from a Firm or Company for a Licence to act as an Insurance Agent

(*See* Rule 16A of the Insurance Rules, 1939)

To

The Controller of Insurance,

Department of Insurance, Simla

Dear Sir,

It is requested that a licence to act as an Insurance Agent may be granted to our Firm/Company

2 *It is hereby declared that—

(i) any partner of our Firm/any Director of our Company has not been found to be of unsound mind by a Court of competent jurisdiction ,

(ii) any partner of our Firm/any Director of our Company has not been found guilty of criminal misappropriation or criminal breach of trust, or cheating or forgery, or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction ,

(iii) any partner of our Firm/any Director of our Company has not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceedings relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer , and

(iv) any partner of our Firm/any Director of our Company is not a minor

3 *It is also declared that the particulars given below are true and that the licence for which our Firm/Company apply will be used only by our Firm/Company for soliciting or procuring general insurance business

1	Full name of the applicant (In Block Letters)	(1) Company/Firm
2	Full address	(2)
3	(i) (In the case of a Firm) the name of all the partners therein ,	(3
	(ii) (In the case of a C names of the Dir	

*St

4	State number and date of expiry of certificate to act as a Principal Agent held immediately before the 1st August, 1957	(4)	. . . . .
5	The date from which licence should be effective	(5)	. . . . .

Government of India Insurance Stamp for Rs 5

Yours faithfully,

(Signature of applicant)

Name of place

Dated the 19

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance, Act, 1938, which provides that whoever in any document required for the purposes of any of the provisions of that Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both

2 A licence can be granted to a firm or company registered under section 42A of the Act, which held a certificate to act as a Principal Agent immediately before the 1st August, 1957

3 A firm or company registered under section 42A of the Act, which held a certificate to act as a Principal Agent immediately before the 1st August, 1957, can apply for only one licence which will entitle it to solicit or procure any class of general insurance business and to act as an insurance agent for any insurer

4 The application should be filled in, as far as possible, in English language

5 Any correction or alteration made in any answer to the question in the application should be initialed by the applicant

6 Payment in cash or by money order, cheque, postal order, postage stamp or bank draft is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one is required, application should be sent by registered post (acknowledgment due)

FORM V-PA

Application from a Firm or Company for renewal of a licence to act as an Insurance Agent

[*See* Rule 16A of the Insurance Rules, 1939]

From

Name of Applicant
(In Block Letters)

Full Address
(In Block Letters)

To

The Controller of Insurance
Department of Insurance, Simla

Licence No

Date of expiry—

Dear Sir,

It is requested that the above licence may be renewed for a further period of three years

2 *It is hereby declared that—

(*i*) any partner of our Firm/any Director of our Company has not been found to be of unsound mind by a Court of competent jurisdiction,

(*ii*) any partner of our Firm/any Director of our Company has not been found guilty of criminal misappropriation or criminal breach of trust, or cheating or forgery, or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction,

(*iii*) any partner of our Firm/any Director of our Company has not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceeding relating to any policy of insurance company or in the course of an investigation of the affairs of an insurer, and

(*iv*) any partner of our Firm/any Director of our Company is not a minor

3 *It is also declared that the particulars given above are true and that the licence for which our Firm/Company apply will be used only by our Firm/Company for soliciting or procuring general insurance business

Government of India Insurance Stamp *vide* Note 5

Yours faithfully,

(Signature of applicant)

Dated the 19

*Strike out portions not required

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance Act, 1938, which provides that whoever in any document required for the purposes of any of the provisions of that Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both

2 The name and the licence number given in the application should be identical with those shown in the last licence held If there is any subsequent change in the name, the reasons for the same should be stated furnishing documentary evidence for the same

3 Any correction or alteration made in the application should be initialed by the applicant

4 The application should be filled in, as far as possible, in the English language

5 The application should reach the Controller of Insurance before the expiry of the last licence held by the applicant but not more than three months before such expiry and "Government of India Insurance" Stamp for Rs 5 should be affixed to it If the application does not reach the Controller of Insurance at least 30 days before the date on which the last licence ceases to be in force, "Government of India Insurance" Stamp to the value of Rs 2 should be affixed to the application by way of penalty In this connection also refer to the provisos to Rule 16A of the Insurance Rules, 1939

6 Payment in cash or by money order, cheque, postal order, postage stamp or bank draft is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one is required the application should be sent by registered post (acknowledgment due)

Not Transferable

FORM V-PB

Government of India

Department of Insurance

Licence No

[*See* Rule 16A of the Insurance Rules, 1939]

Licence to act as an Insurance Agent under Part II of the Insurance Act, 1938, for General Insurance Business only

(To be filled in by the applicant)

Name

Address

having paid the prescribed fee and having made the necessary declaration is hereby authorised to act as an Insurance Agent for three years from

Simla, dated the ——— 19

Signature of licence-holder. .. *Controller of Insurance.*

This licence is not valid unless it bears a facsimile of the signature of the Controller of Insurance and the initials of a person authorised by him in this behalf and the signature of the licence-holder The latter should put his signature as soon as the licence is received

Notes

1 If it is desired to renew this licence for a further period, the procedure laid down in Rules 16 and 16A of the Insurance Rules, 1939, shall be followed, and an application for renewal should reach the Controller of Insurance before the licence expires In this connection, attention is also invited to the provisos to Rule 16A of the Insurance Rules, 1939

2 This licence authorises the licence-holder to act as an agent for registered insurer and for any class of general insurance business and, therefore, no identifying mark or note of any description by which the identity of an insurer might be established should be placed on the licence

3 No correction in this licence will be valid unless initialed by the Controller of Insurance or a person authorised by him in this behalf

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FORM V-S

Application from a Co-operative Society or Panchayat for a Licence to act as an Insurance Agent

(*See* Rule 16A of the Insurance Rules, 1939)

To

The Controller of Insurance,

Department of Insurance, Simla

Dear Sir,

It is requested that a licence to act as an Insurance Agent may be granted to our Co operative Society/Panchayat, particulars given below

1	Full name of the applicant (In Block Letters)	1. Co-operative Society/Panchayat
2	Full address	2

2 It is hereby declared that—

(*i*) our [1]Co-operative Society / Panchayat has been [1]registered / incorporated under the [2]Act

1 Strike out portions not required
2. Here mention the name of the Central/State Act under which the institution is registered or incorporated

and is competent to act as an insurance agent *vide* section . of the above Act ,

(ii) the Society/Panchayat has also been authorised to act as an insurance agent under its by laws, rules and regulations (*vide* rules/by law),

(iii) the particulars given above are true and that the licence for which our *Co operative Society/Panchayat apply will be used only by our *Co-operative Society/Panchayat for soliciting or procuring insurance business , and

(iv) the undersigned has been duly authorised to sign this application Government of India Insurance Stamp for Rs 5

Yours faithfully,

Name of place
Dated the .

Signature with name and designation
(Seal of the Co-operative Society/Panchayat)

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance Act, 1938 which provides that whoever in any document required for the purposes of any of the provisions of that Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both

2 A licence can be granted to a Co-operative Society/Panchayat registered or incorporated under any Central or State Act

3 A copy of the By-laws, Rules or Regulations of the applicant certified by its President or Chairman must accompany this application

4 The application should be filled in, as far as possible, in English language

5 Any correction or alteration made in any answer to the questions in the application should be initialed by the applicant

6 Payment in *cash or by money order, cheque, postal order, postage stamp or bank draft* is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one is required, the application should be sent by registered post (acknowledgment due)

*strike out portions not required

FORM V-SA

Application from a Co-operative Society or Panchayat for renewal of a licence to act as an Insurance Agent

[*See* Rule 16A of the Insurance Rules, 1939]

From

Name of applicant _____
(In Block letters)

Full address _____
(In Block letters)

To

The Controller of Insurance,
Department of Insurance,
Simla

Licence No _____

Date of expiry _____

Dear Sir,

It is requested that the above licence may be renewed for a further period of three years

2 [1]It is hereby declared that—

[1](See footnote also)

(1) our [1]Co-operative Society / Panchayat has been [1]registered / incorporated under the [2]— Act, ———— and is competent to act as an insurance agent *vide* Section ———— of the above Act

---

1 Strike out portions not required
2 Here mention the name of the Central/State Act under which the institution is registered or incorporated.

(ii) the Society/Panchayat has also been authorised to act as an insurance agent under its by-laws, rules, regulations (*vide* rule/ by-law ...)

(iii) the particulars given above are true and that the licence for which our [1]Co-operative Society/Panchayat apply will be used only by our Co-operative Society/Panchayat for soliciting or procuring insurance business, and

(iv) the undersigned has been duly authorised to sign this application. Government of India Insurance Stamp for Rs 5

Yours faithfully,

Name of place
Dated the 19

Signature with name and designation.
(Seal of the Co-operative Society/Panchayat)

Notes

1 The attention of the applicant is drawn to section 104 of the Insurance Act, 1938, which provides that whoever in any document required for the purposes of any of the provisions of that Act wilfully makes a statement false in any material particular knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to one thousand rupees, or with both.

2 The name and the licence number given in the application should be identical with those shown in the last licence held. If there is any subsequent change in the name, the reasons for the same should be stated furnishing documentary evidence for the same

3 Any correction or alteration made in the application should be initialed by the applicant

4 The application should be filled in, as far as possible, in the English language

5 The application should reach the Controller of Insurance before expiry of the last licence held by the applicant but not more than three months before such expiry and "Government of India Insurance" stamp of Rs 5 should be affixed to it If the application does not reach the Controller of Insurance at least 30 days before the date on which the last licence is to be in force, "Government of India Insurance" stamp of Rs 5 should be affixed to the application by way of penalty In this connection also refer to the proviso to rule 5 of the Insurance Rules

1 Strike out [illegible]

6 Payment in *cash or money order, cheque, postal order, postage stamp or Bank draft* is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one is required the application should be sent by registered post (acknowledgment due)

Not Transferable

FORM-V-SB

Government of India

(Department of Insurance)

Licence No

(*See* Rule 16A of the Insurance Rules, 1939)

Licence to act as an Insurance Agent under Part II of the Insurance Act, 1938

Name

Address

(To be filled in by the applicant)

having paid the prescribed fee and having made the necessary declaration is hereby authorised to act as an insurance Agent for three years from

Controller of Insurance

Simla dated the 19

Signature and seal of Licence-holder

This licence is not valid unless it bears a facsimile of the signature of the Controller of Insurance and the initials of a person authorised by him in this behalf and the signature of the licence-holder The latter should put his signature and seal as soon as the licence is received

Notes

1. If it is desired to renew this licence for a further period, the procedure laid down in rules 16 and 16A of the Insurance Rules, 1939, shall be followed and an application for renewal should reach the Controller of Insurance before the licence expires In this connection attention is also invited to the provisos to Rule 16A of the Insurance Rules, 1939

2 No correction in this licence will be valid unless initialed by the Controller of Insurance or a person authorised by him in this behalf

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FORM V-C

Application for a certificate to act as a Principal/Chief/Special Agent

[*See* Rule 16D (a)]

To

The Controller of Insurance,

Department of Insurance, Simla.

Dear Sir,

It is requested that a certificate to act as a Principal/Chief/Special Agent may be granted to me/our Firm/our Company I/We am/are will be working for and the functions that will be entrusted to me/us are .

*2 It is hereby declared that—

(i) I/any partner of our Firm/any director of our Company have/has not been found to be of unsound mind by a court of competent jurisdiction ,

(ii) I/any partner of our Firm/any director of our Company have/has not been found guilty of criminal misappropriation or criminal breach of trust, or cheating or forgery, or an abetment of or attempt to commit any such offence by a court of competent jurisdiction ,

(iii) I/any partner of our Firm/any director of our Company have/has not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer , and

(iv) I/any partner of our Firm/any director of our Company am/is not a minor

3 It is also declared that the particulars given below are true and that the certificate for which I/our Firm/our Company apply will be used only by myself/our Firm/our Company for causing insurance business to be solicited or procured

(1) Full name of the applicant (in Block letters) Individual Mr /Mrs /Miss Company Firm —	(1)
(2) Full address	(2)
(3) (i) (In the case of a firm) the names of all the partners therein	(3)
(ii) (In the case of a company) the names of the directors	
(4) In the case of an individual	(4)
(a) Date of birth in Christian Era	(a)
(b) Age on the date of application	(b)
(5) Did the applicant ever apply for a certificate to act as a Principal/ Chief/Special Agent before? If so, state	(5)
(a) Whether the certificate was granted, and in that case the No and date of expiry of the last certificate,	(a)
(b) Whether the certificate was refused In that case the No and date of the letter conveying refusal of the certificate,	(b)
(c) Whether the certificate was granted but subsequently cancelled In that case the No and date of the letter conveying cancellation of certificate,	(c)
(6) If the applicant holds a licence to act as an Insurance Agent and/or a certificate or certificates to act as a Principal Agent and/or a Chief Agent and/or a Special Agent, state No and date of expiry of licence and/or certificate or certificates held If no licence or certificate is held, say Nil If a licence or certificate has been applied for, state the date of the application	(6)

N B—Replies (*a*), (*b*) and (*c*) to be given only if the reply to the main query is in the affirmative

*Strike out portions not required

Appointment of Chief Commercial Examiner, Principal Examiner, Chief Examiner, Senior Examiner

Name of firm

Date

Signature of applicant

Notes

1. The appointment of Chief Commercial Examiner, Principal Examiner, Chief Examiner, Senior Examiner, Examiner, Assistant Examiner, Clerk, Junior Clerk, Messenger, Office Keeper, Caretaker, Watchman, Porter, Cleaner, Charwoman, Charwoman, Charwoman

*2 It is hereby declared that since the date of my/our Firm's/our Company's last application for a certificate—

(i) I/any partner of our Firm/any director of our Company have/has not been found to be of unsound mind by a court of competent jurisdiction,

(ii) I/any partner of our Firm/any director of our Company have/has not been found guilty of criminal misappropriation or criminal breach of trust or cheating or forgery or an abetment of or attempt to commit any such offence by a court of competent jurisdiction,

(iii) I/any partner of our Firm/any director of our Company have/has not been found guilty of or to have knowingly participated in or connived at any fraud, dishonesty or misrepresentation against an insurer or an insured in the course of any judicial proceedings relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer, and

(iv) My/our Firm's/our Company's certificate has not been cancelled at any time by the Controller of Insurance

3 A certificate from the insurer for whom I am/we are working, *viz*,

(Name of Insurer)

to the effect that in the preceding calendar year the provisions of clauses 2 and 3 of Part A/clauses 2 and 4 of Part B/clauses 2 and 3 of Part C of the Sixth Schedule to the Insurance Act 1938, have been complied with by me/us is attached The functions entrusted to me/us by the said insurer since the certificate was last renewed or issued were

*4 I/We hold/have applied for { a licence to act as an Insurance Agent No expiring on / a certificate to act as a Principal Agent No P A expiring on / a certificate to act as a Chief Agent No C A expiring on / a certificate to act as a Special Agent No S A expiring on }

5 I/We neither hold nor have applied for { a licence to act as an Insurance Agent / a certificate to act as a Principal Agent / a certificate to act as a Chief Agent / a certificate to act as a Special Agent }

6 It is also declared that the facts stated herein are true and that the certificate for which I/we hereby apply will be used only by myself/ourselves for causing insurance business to be solicited or procured

Government of India Insurance Stamp(s) *vide* note 5

Yours faithfully,

Dated the 19 (Signature of the applicant)

*Strike out portions not required

Notes

1 The attention of the applicant is drawn to section 104 of the Act, which provides that whoever in any document required for the purposes of any of the provisions of the Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one thousand rupees, or with both

2 The name and the certificate No given in the application should be identical with those shown in the last certificate held If there is any subsequent change in the name, the reasons for the same should be stated furnishing documentary evidence for the same.

3 Any correction or alteration made in any answer to the questions in the application should be initialed by the applicant

4 The application should be filled in the English language

5 The application should reach the Controller of Insurance not earlier than three months before, but not later than 12 months after the last certificate held by the applicant expires and a "Government of India Insurance Stamp" for Rs 25 in the case of a principal agent or a chief agent and for Rs 10 in the case of a special agent should be affixed to it

An additional stamp for Rs 5 in the case of a principal agent or a chief agent and Rs 3 in the case of a special agent must be affixed, if the application reaches the Controller of Insurance on or after the date on which the last certificate held by the applicant ceases to be in force Any application reaching the Controller of Insurance after a period of twelve months from that date, will be treated as an application for a fresh certificate

6 Payment in cash or by money order, cheque, postal order, postage stamp or bank draft is not accepted and will be returned at applicant's cost

7 No acknowledgment of this application will be sent If one required, the application should be sent by registered post (acknowledgment due)

8 In the case of a special agent it is not necessary to state the functions entrusted to him

(*Not Transferable*)

FORM V-E

GOVERNMENT OF INDIA

Department of Insurance

Certificate No [Govt. Crest]

[*See* Rule 16D (*e*)]

Certificate to act as a Principal/Chief/Special Agent under section 42A of the Insurance Act, 1938

Name

Address

having paid the prescribed fee and having made the necessary declaration is hereby authorised to act as a Principal/Chief/Special Agent for one year from

Simla, dated the 19

Signature of Certificate holder Controller of Insurance

The Certificate is not valid unless it bears a facsimile of the signature of the Controller of Insurance and the initials of a person authorised by him in this behalf and the signature of the certificate holder The latter should put his signature as soon as the certificate is received

Notes

1 If it is desired to renew this certificate for a further period, the procedure laid down in Rule 16D of the Insurance Rules, 1939, shall be followed, and an application for renewal should reach the Controller of Insurance not earlier than three months before, but not later than 12 months after the certificate expires

2 No correction in this certificate will be valid unless initialed by the Controller of Insurance or a person authorised by him in this behalf

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FORM V F

(*See* Rule 17)

From

(Name)

(Occupation)

(Address)

To

The Directors

Insurance Co Ltd

In connection with my request for the transfer of Shares Nos of your company to my name, I hereby solemnly declare that out of the above shares I propose

(1) to hold Shares Nos

for my own benefit

(2) to hold

(i) (a) Shares Nos as a nominee.

(b) jointly with (Name and Address) for the benefit of

(Name)
(Occupation)
(Address)

(ii) (a) Shares Nos as a nominee

(b) jointly with (Name and Address) for the benefit of

(Name)
(Occupation)
(Address)

(iii) (a) Shares Nos as a nominee

(b) jointly with (Name and Address) for the benefit of

(Name)
(Occupation)
(Address)

(iv) (a) Shares Nos. as a nominee.

(b) jointly with (Name and Address) for the benefit of

(Name)
(Occupation)
(Address)

Made at $\frac{\text{a m}}{\text{p m}}$ on day the

at Signature.

In the presence of (witness) Signature
Name and Address

Notes

1 If the beneficial interest of any person is limited in extent in any way the extent of beneficial interest should be clearly stated

2 Strike off those words in cases where the nominee does not hold the shares jointly with any other person or persons

3 Each beneficial ownership is to be stated separately

FORM V-G

(*See* Rule 17A)

From

(Name)

(Occupation)

(Address)

To

The Directors

Insurance Co Ltd ,

In connection with shares Nos of your company standing in your share register in the name of (name) (occupation) (address) I hereby solemnly declare that out of the above shares,

(i) I am the sole beneficial owner of shares Nos and I acquired the beneficial interest before the commencement of the Insurance (Amendment) Act, 1950,

---

on the day of 19 ,

(ii) in respect of shares Nos , I and (name) (occupation) (address) and (name) (occupation) (address) are joint beneficial owners, my interest in these shares being limited to and was acquired before the commencement of the Insurance (Amendment) Act, 1950

---

on the day of 19

Made on day the 19 at

In the presence of

(Witness) Signature

Name and Address

Signature

I, of In whose name the shares Nos of your company stand in your share register, hereby recognise in full the interest claimed in respect of the said shares and in token thereof have countersigned the above declaration

Signed on the day of the 19

In the presence of

(Witness) Signature

Name and Address

Signature

FORM V-H

(*See* Rule 17C)

Statement of the bases of Premiums

Name of the Insurer

1 Basis .

Mortality

Rate of interest

Expenses

Bonus loading

The above basis is the basis underlying the premiums in Tables Nos. of the prospectus dated issued by

Company Limited

2 Basis

Mortality

Rate of interest

Expenses

Bonus loading

The above basis is the basis underlying the premiums in Tables Nos of the prospectus dated issued by

Company Limited.

I hereby certify that the bases underlying the premium rates offered by Company Limited are as set out above

Station

Actuary

Date

Notes

1 The premiums may be grouped according to bases and into as many groups as may be necessary, and set out one group after another till all the premium tables and premiums offered outside the tables are covered

2 If different bases have been used for different ages and terms in the same Table of rates, these should be stated separately

FORM VI-A

[*See*] Rule 19A (1)]

Register of members (excluding membership merely by virtue of holding policies issued by the Society), proprietors and shareholders

Serial No	Date of becoming member, proprietor, or shareholder, as defined in heading	Full name	Address	Occupation	Date on which ceased to be a member, etc	Remarks
1	2	3	4	5	6	7

(FORM VI B)

[*See* Rule 19A (11)]

Register of Directors, Manager, Secretary and other Officers

Serial No	Full name	Address	Occupation other than in the service of the society	Date when he commenced to hold the office in question	Date of ceasing to hold the office in question	Remarks
1	2	3	4	5	6	7

Notes

1 A separate page must be used for each title of office, *viz*, Secretary

2 'Remarks' column should show the mode of vacating office, whether by death, resignation, retirement, etc

FORM VI-C

[*See* Rule 19A (111)]

Proposal Register

Serial No	Date and number o proposal	Name and address of proposal	How disposed of*	Date of acceptance if accepted	Number and date of policy*	Date of despatch of policy*	Remarks
1	2	3	4	5	6	7	8

*Note.—In case proposal is rejected or does not result in a policy against columns 4 to 7 the amount of advance or deposit received if any and the date of its adjustment with reasons or the date of its refund should be stated.

FORM VI D

[See Rule 19A (iv)]

Register of Policies issued

1	2	3	4	5	6	7	8	9	10	11	12	13
Serial No	Number and date of proposal	Policy No and date of commencement of insurance[1] Date and mode of exit with cross reference to the exit register concerned[2]	Name, occupation and address of life insured[3]	Name and address of person paying the premiums of other than life insured and his relationship to life insured[3]	Name and address of each nominee and his relationship to the policy-holder and the date of registration of each nomination and of receipt of notice of cancellation or change thereof, if any	Term of Policy and full particulars of the Table under which the Policy is issued	Sum insured[4]	Premium Amount of each instalment and due date of final instalment	[5]The percentage of the first year and renewal premiums prescribed in the society's rules for expenses	[5]Amount that can be expended on the basis of columns 9 and 10	Due dates of all instalments in each calendar year	If assigned name and address of each assignee and dates on which the respective notices were received

Notes

[1]Cross-reference should be given to other policies, if any, if the contingencies on the happening of which the sums insured are payable under those policies relate to the same person as under this policy

[2]The entries regarding exit should be shown in pencil, when the exit is *capable of revival* and erased on subsequent revival When revival is no longer possible the pencil entries should be replaced by ink

[3]In case of contingencies other than death, in columns 4 and 5, substitute for the words "the life insured" the words 'the person to whom the contingencies on the happening of which sums are payable relate"

[4]If the sum insured excluding bonus varies during the term of the policy, both the maximum and minimum of the sum insured should be stated Where a policy has been made paid up necessary correction shall be made to the sum assured by showing the paid-up amount and the date of making it paid up shall also be indicated

[5]If a uniform percentage (irrespective of the tables and premium terms of policies) is fixed for expenses of management or if a separate register of premium receipts for each group of premiums having the same percentage allowance for expenses is maintained this column need not be filled in.

FORM VI-E

[*See* Rule 19A (v)]

Premium Register in respect of all premiums falling due during the month of 19

Policy No	Name of the person to whom the policy was issued	Due date of premium	Date of payment of premium	Amount of premium	Amount out of the premium stated in column 5 that can be spent as expenses of management as per rules of the society (to the nearest paise)	Particulars of any other payment as fees, fines, etc, realised on the policy during the month
1	2	3	4	5	6	7

Notes

1 The register should be closed at the end of each month and the closing should be completed within a month

2 Separate register should be maintained in respect of each of the contingencies specified in or prescribed under section 65(2) of the Insurance Act, 1938

3 Particulars relating to a new policy shall be entered in the month in which the first premium is received Particulars relating to a revived policy shall be entered in the month in which the policy is revived

4 If a uniform percentage is fixed for expenses of management, irrespective of the tables and premium terms of policies or if a separate register of premium receipts for each group of premiums having the same percentage allowance for expenses is maintained, column 6 need not be filled in

5 A society may, if it considers necessary and desirable, maintain a separate register of the particulars specified in column (7), provided that the separate register gives also the information in columns (1) and (2) with full cross-references with this register

FORM VI-F

[*See* Rule 19A (vi)]

Lapse Register

Date of entry in this register	Policy Number	Name of the insured	Date of commencement of insurance	Due date of first unpaid premium	Amount of any loan granted on the security of the policy and date when the loan is written off	Date of revival (if any)
1	2	3	4	5	6	7

Note—The register should be closed at the end of each month and the closing shall be completed within a month

FORM VI-G

[*See* Rule 19A (viii)]

Register of claims not including annuities

Serial No	Policy No	Name of life insured	Date of intimation of the happening of the contingency	Name, address and title of claimant	Date of receipt of claim papers	Date of payment	Total sum insured with bonus additions up-to date	Net sum paid in cash	Cause of difference, if any, between (8) and (9)	Date of and grounds for rejection, if any
1	2	3	4	5	6	7	8	9	10	11

Notes

1 Where there is a series of policies on the same life, each policy must be entered separately

2 A separate register should be maintained for each class of contingency specified in or prescribed under section 65 (2) of the Insurance Act, 1938, against which policies have been issued

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FORM VI H

[*See* Rule 19A (viii)]

Register of claims for annuities or other periodical payments

Serial No — Policy No
Name of life insured
Date of intimation of the happening of the contingency — Date of receipt of Claim papers
Name
Address of claimant
Title
Date of first payment — Date and ground of rejection
Date and cause of cessation of payments

Due date 1	Amount due 2	Amounts paid in cash and date 3	Cause of difference, if any 4

Note—A separate register should be maintained for each class of contingency specified in or prescribed under section 65 (2) of the Insurance Act, 1938, in respect of which a periodical sum insured is to be paid

FORM VI-I

[*See* Rule 19A(*ix*)]

Register of Agents

Serial Number	Name, address and all other occupations	Date of appointment	Terms of remuneration	Date when ceased to be agent	Remarks
1	2	3	4	5	6

FORM VII

[*See* Rule 20]

Revenue Account of the (*here insert name of provident society*) *for the year ending* 19

	Rs P		Rs P
Dividends to shareholders payable on for the year ending (This is to be stated here by Societies not supplying a Profit and Loss Account)		Balance of Funds at the beginning of the year—	
Claims under policies (including provision for claims due or intimated)—		Rs P	
Rs P		Funds specified separately according to the classes of contingency set forth in section 65 Investment Reserve Fund	
To be specified separately according to the classes of contingency set forth in section 65		Dividend Reserve Fund	
Other classes (to be separately specified)		Other Funds (to be separately described)	
Annuities			
Surrenders including surrenders of Bonus		Shareholders' capital paid up at the beginning of the year	
Bonuses in cash		Shareholders' capital paid up during the year	
Bonuses in reduction of premiums			

FORM VII—*contd*

Expenses of management—	Rs P
1 Commission to agents	
2 Commission and allowances other than those payments contained in Item 1	
3 Salaries, etc (other than those contained in items 1 and 2)	
4 Travelling expenses	
5 Directors' fees	
6 Auditors' fees	
7 Actuarial fees	
8 Medical fees	
9 Law charges	
10 Advertisements	
11 Printing and stationery	
12 Rents for offices belonging to and occupied by the Society	
13 Rents of other offices occupied by the Society	
14 Other expenses of management (to be specified)	
Bad debts	
Other payments (accounts to be specified)	
Shareholders' capital paid up at the end of the year as per balance-sheet	
(Profit transferred to Profit and Loss Account if a Profit and Loss Account is submitted)	
Balance of funds at the end of the year as per balance-sheet—	Rs P
Funds, specified separately according to the classes of contingency set forth in section 65	
Investment Reserve Fund	
Dividend Reserve Fund	
Other funds (to be separately described)	

Premiums—	1st year premiums		Renewal premiums		Single premiums	
	Rs	P	Rs	P	Rs	P
To be specified separately according to the classes of contingency set forth in section 65						
Insuring other benefits to be separately specified						
Total premiums						

	Rs P
Consideration for annuities granted	
Interest, dividends and rents	
Less Income tax	
Entrance fees	
Fines	
Other income (accounts to be specified)	
[Loss transferred to Profit Loss Account if a Profit Loss Account is	

Notes relating to the Revenue Account—(Form VII)

1 All items in this account shall be net amounts after deduction of the amounts paid and received in respect of reassurances of the society's risks

2 A society transacting more than one class of business shall show in its accounts the premium income, the claims and the funds separately for business under each class of contingency prescribed or authorised under section 65 (*See* rule 18)

3 If any sum has been deducted from the expenses and credit has been taken for it in the balance-sheet as an asset the sum so deducted shall be shown in a separate statement, as follows

Statement regarding preliminary expenses, etc , submitted by the or the year ending 19

Balance at beginning of year either of the adverse balance of any profit and loss or revenue account or such bad debts and preliminary and other expenses as may not have been included in the profit and loss or revenue account either as loss or outgo but for which credit is taken in the balance-sheet as assets	Rs
Addition hereto during the year not shown as loss or outgo in either the profit and loss or revenue account	Rs
Total Rs	
Less amount written off during the year as per profit and loss or revenue account	Rs
Balance at the end of year still shown as assets in the balance-sheet	Rs

4 The society may, if it so desires show in this account the amount of commission on new business separately from commission on renewal premiums

5 The items on the income side shall relate to income whether actually received or not and the items on the expenditure side shall relate to expenditure whether actually paid or not

6 Any office premises which form part of the assets of any fund of the society shall be treated as an interest earning investment and accordingly in the revenue account a fair rent for the premises shall be included under the heading "Interest Dividends and Rents" and a proper charge for the use thereof shall be included in the appropriate place in the expenses of management

7 The following information shall be supplied in addition, namely, the gross premium income for each class of contingency for which the net premium income is shown separately in the revenue account and a statement in Form VII-A of the particulars specified therein (*See* note 1)

FORM VII-A

Submitted by the *society* *for the year ending 19*

	Policies insuring money to be paid on death only			Policies insuring money to be paid only on survivance or earlier death			Annuities		Marriage policies		And so on for each contingency specified in or prescribed under section 65 (2) of the Insurance Act, 1938, for which separate account is required to be prepared
	No	Sum assured	Reversionary bonus	No	Sum assured	Reversionary bonus	No	Sum insured	No	Sum insured	
		Rs	Rs		Rs	Rs		Rs		Rs	
(1) Policies at end of previous year											
(2) New policies issued as per Statement Form IX											
(3) Old policies revived											
(4) Old policies changed and increased											
(5) Bonus additions allotted											
Total											
Discontinued during year											
(6) *By death											
(a) amount payable											
(b) amount not payable											

*Note —For sum assured and bonuses, the amount actually payable as per Rules of the society should be shown against item (6) (*a*), while the difference between the total sum assured and the actual amount payable on policies subject to lien becoming claims by death should be shown against (6) (*b*) The columns for number of policies should be left blank against item (6) (*b*)

FORM VII A—*contd*

(7) By maturity or the happening of the contingencies insured against (each contingency being shown separately)												
(8) By expiry of term												
(9) By surrender of												
(*i*) policy and												
(*ii*) bonuses												
(10) By forfeiture or lapse												
(11) By change and decrease												
(12) By being not taken up												
Total												
Total existing at the end of the year												

FORM VIII

(*See* Rule 20)

Balance-sheet of *as at* *day of* *19* .

	Rs P		Rs P
Shareholders' capital (each class to be stated separately)		Loans—	
		On mortgages of property	
		On security of municipal and other public rates	
Authorised—			
		On stocks and shares	
Shares of Rs each Rs		On society's policies within their surrender value	
		On personal security	
Subscribed—		To other provident societies and insurers	
Shares of Rs each Rs			
		Investments—(*f*)	
Called up—		Deposit with the Reserve Bank of India (Securities to be specified) Indian Government Securities	
Shares of Rs each Rs		State Government Securities	
Less unpaid calls Rs		British, British Colonial and British Dominion Government Securities	
Balances of Funds—			
		Foreign Government Securities	
To be specified separately as shown in the Revenue Account (Form VII)		Indian Municipal Securities	
		British and Colonial Securities	
Balance of Profit and Loss Account		Foreign Securities	
Debenture stock per cent		Bonds, Debentures, Stocks and other Securities whereon Interest is guaranteed by the Indian Government or a State Government	
Loans and advances(*a*)			
Bills payable (*a*)			
Estimated liability in respect of outstanding claims (*b*) To be stated separately in respect of each fund shown in the Revenue Account (Form VII)		Bonds, Debentures, Stocks and other Securities whereon interest is guaranteed by the British or any Colonial Government	
		Bonds, Debentures, Stocks and other Securities whereon Interest is guaranteed by any Foreign Government	
Annuities due and unpaid(*b*)			
Outstanding dividends		Debentures of any railway in India	

Sundry creditors (including outstanding and accruing expenses and taxes) (*a*)		Debentures of any railway out of India
		Preference or guaranteed share of any railway in India
Other sums owing by the society (*a*)		Preference or guaranteed shares of any railway out of India
Contingent liabilities (to be specified) (*c*)		Railway Ordinary Stocks (*i*) in India, (*ii*) out of India
		Other Debentures and Debenture Stock of Companies incorporated (*i*) in India, (*ii*) out of India
		Other guaranteed and preference Stocks and Shares of Companies incorporated (*i*) in India, (*ii*) out of India
		Other ordinary Stocks and Shares of Companies incorporated (*i*) in India, (*ii*) out of India
		Holdings in Subsidiary Companies House property (*i*) in India, (*ii*) out of India
		Other investments (to be specified)
		Agents' Balances
		Outstanding premiums (*b*) (*d*)
		Interest dividends and rents outstanding (*b*)
		Interest, dividends and rents accruing but not due (*b*)
		Sundry debtors
		Bills receivable
		Cash—
		At bankers on Deposit Account
		At bankers on Current Account and in hand
		Other Accounts to be specified (*e*)

(*a*) If the society has deposited security as cover in respect of any of these items the amount and nature of the securities so deposited shall be clearly indicated on the face of the balance sheet

(*b*) These items or/or have been included in the corresponding items in the revenue account or profit and loss account Outstanding and accruing interest, dividend and rents shall be shown after deduction of income-tax or the income-tax shall be provided for amongst the liabilities on the other side of the balance sheet

(*c*) Such items as amount of liability in respect of bills discounted, uncalled capital in respect of other investments, etc , shall be shown in their several categories under the heading "Contingent liabilities" or the appropriate items on the assets side shall be set out in such detail as will clearly indicate the amount of uncalled capital

(*d*) Either this item shall be shown net or the commission shall be provided for amongst the liabilities on the other side of the balance-sheet

(*e*) Under this heading shall be included such items as the following which shall be shown under separate heading suitably described

Office furniture, goodwill, preliminary, formation and organisation expenses, development expenditure account, discount on debentures issued, other expenditure carried forward to be written off in future years, adverse balance of profit and loss account, etc The amounts included in the balance-sheet shall not be in excess of cost

(*f*) Where any part of the assets of a provident society is deposited in any place outside the States as security for the owners of policies issued in that place the balance sheet shall state that part of the assets has been so deposited and if any such part forms part of the insurance fund in respect of any contingency specified in, or prescribed under, sub-section (2) of section 65 of the Insurance Act, 1938, shall show the amount thereof and the place where it is deposited

Statement and certificates relating to the balance-sheet

I There shall be appended to the balance-sheet a statement showing separately for every asset which is included in the balance-sheet, the full title and particulars of the asset and the value at which it is included in the above balance sheet, and in the case of assets being stock exchange securities, the nominal value and the market value as at the date of the balance sheet In stating the market value of a stock exchange security no credit shall be taken in the statement for accrued interest

II To the balance-sheet shall be appended,—

(*a*) A certificate signed by the same persons as are required to sign the balance sheet certifying that the values of all the assets have been reviewed as at the date of the balance-sheet and that in their belief the assets set forth therein are shown in the aggregate at amounts not exceeding their realisable or market value under each of the several headings "Loans", "Investment", "Agents' Balances"

"Outstanding premiums", "Interest, dividends and rents outstanding", "Interest, dividends and rents accruing but not due", "Sundry debtors", "Bills receivable" and the items entered under "other accounts"

Provided that if the persons signing the certificate are unable to certify without reservation that the assets set forth in the balance sheet are so shown as aforesaid, a full explanation shall be given

(*b*) A certificate signed by the auditor (which shall be in addition to any other certificate or report he is required by law to give with respect to the balance sheet) certifying that he has verified the cash balances, the loans and investments

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FORM IX

(*See* Rule 20)

Statement under clause (a) (i) of sub section (2) of Section 80 in respect of (here insert name of provident society) for the year ending 19

Contingencies on which sum assured or other benefit is payable* (Classified according to the contingencies separately specified in section 65)	New policies effected			Existing policies discontinued					
				By happening of contingency insured against		Surrenders, forfeitures and lapses		For other reasons	
	Number of policies	Total full sums insured	Total premium income received	No	Sum insured and Bonus	No	Sum insured and Bonus	No	Sum insured and Bonus
		Rs	Rs		Rs		Rs		Rs

*Where the provident society issues annuities either immediate or deferred the statement shall show the number of each class of such annuities the annual sums payable and the consideration received or the annual premium in the case of deferred annuities

FORM X

(*See* Rule 20)

Statement under clause (b) of sub section (2) of section 80 in respect of (here insert name of provident society) for the year ending 19

	No	Sum insured
		Rs
Policies effected—		
By husband or wife		
„ son		
„ daughter		
„ father		
„ mother		
„ brother		
„ sister		
„ grandson		
„ grand-daughter		
„ nephew		
„ niece		
„ any other person		
Total		

FORM XI

(*See* Rule 26)

It is hereby certified that all amounts received directly or indirectly at credit of the revenue account in respect of business transacted in India referred to in clause (*b*) of sub-section (2) of section 16 of the Act whether from the head office of the insurer or from any other source outside India, have been shown in the aforementioned revenue account, except such sums as properly appertain to the capital account, and it is further certified that all expenditure including claims attributable to business in India, met during the year in question from sources arising outside India, has been shown in the said revenue account except such sums as properly appertain to the capital account.

FORM XII

(*See* Rule 27)

Submitted by the (*here insert name of insurer*) *for the year ending* 19

	Divided insurance policies insuring money to be paid on death or survivance		Dividing insurance policies insuring money to be paid on marriage		And so on for each other class of dividing insurance business for which a separate revenue account is submitted
	No	*Minimum sum insured guaranteed	No	*Minimum sum insured guaranteed	
		Rs .		Rs	
1 Policies at beginning of year					
2 New policies issued					
3 Old policies revived					
4 Old policies changed and increased					
5 Bonus additions allotted					
Total					
Discontinued during year					
6 By death					
7 By survivance or the happening of the contingencies insured against other than death					
8 By expiry of term under temporary insurance					
9 By surrender of policy					
10 By surrender of bonus					
11 By forfeiture or lapse					
12 By change and decrease					
13 By being not taken up					
Total discontinued					
Total existing at end of year					

*If there be no minimum amount guaranteed to be paid on the happening of the contingency insured against, the column may remain blank

FORM XIII

(*See* Rule 27)

Submitted by the (*here insert name of insurer*) *for the year ending* 19

11651
2/4/2001

	Number of dividing insurance policies effected in the year under review insuring sums payable at death or survivance		
	Under table No 1	Under table No 2	And so on for each other table of dividing insurance business insuring sums payable at death or survivance
(1) Number of policies insuring money to be paid on the death of a male life—			
Effected during the year by—			
the life insured			
his wife			
,, son			
,, daughter			
,, father			
,, mother			
,, brother			
,, sister			
any person other than the above relations			
(2) Number of policies insuring money to be paid on the death of a female life—			
Effected during the year by—			
the life insured			
her husband			
,, son			
,, daughter			
,, father			
,, mother			
,, brother			
,, sister			
any person other than the above relations			
Total number of policies effected in the year			

If the different tables be not distinguished from one another by numbers as assumed in the above Form, the headings to the Form may be altered accordingly

FORM XIV

(*See* Rule 27)

Submitted by the ..... *society for the year ending* 19

Age of life on the death of whom the policy monies become payable	Number of dividing insurance policies effected in the year under review insuring sums payable at death or survivance			
	Under table No 1	Under table No 2	Under table No 3	And so on for each other table of dividing insurance business insuring sums payable at death or survivance
Under 5 years				
Over 5 and under 10				
„ 10 „ 15				
„ 15 „ 20				
„ 20 „ 25				
„ 25 „ 30				
„ 30 „ 35				
„ 35 „ 40				
„ 40 „ 45				
„ 45 „ 50				
„ 50 „ 55				
„ 55 „ 60				
„ 60 „ 65				
„ 65 „ 70				
„ 70				
Total number of policies effected in the year				

(These totals should agree with the totals in Form XIII)

If the different tables be not distinguished from one another by numbers as assumed in the above Form, the headings to the Form may be altered accordingly

FORM XV

(See Rule 17)

Statement showing the emoluments (salary or commission or both, paid by the Insurance Company, Limited, during

the year ending 31st December

(See notes below)

Serial No	Name, qualification and address	Relationship, if any, with the General Manager or any Director of the Company with particulars thereof	Designation	Nature of any agreement with Company and date of entering into such agreement	Statement of work done	Emoluments				
1	2	3	4	5						

(1) In [illegible]

(b) of clause [illegible] business [illegible] to the [illegible]

[illegible] pa d, [illegible] ind [illegible] year [illegible]

[illegible] R (1962) 2 736 *State of Steel Co Ltd* Commentary on

FORM XVI

(*See* Rule 33)

Summary of balance-sheet and revenue account of company in respect of total business

Revenue Account for the year ending

Particulars	Rs	Particulars	Rs
Claim, annuities, surrenders and bonuses *less* re-insurances		Balance of Fund at the beginning of the year	
Expenses of management including commission		Premiums and consideration for annuities, *less* re insurances	
Bad debts		Interest, dividend and rents, *less* Income tax	
Other items			
Balance of Fund at the end of the year		Other income	
Total		Total	

Balance-sheet as at

	Rs		Rs
Life Insurance Fund		Government securities	
Other Funds		Other Approved securities	
Reserves		Fictitious items and bad assets	
Loans and Advances		Other assets	
Outstanding claims			
Other liabilities			
Total		Total	

THE MARINE INSURANCE ACT, 1963

(No XI of 1963) [18th April, 1963]

(Received the assent of President on the 18th April, 1963)

An Act to codify the law relating to Marine Insurance

BE it enacted by Parliament in the Fourteenth Year of the Republic India as follows

1 (1) This Act may be called the Marine Insurance Act, 1963

Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint

SYNOPSIS

1 *Construction* — *Perils of rivers, etc*
2 *Scope of the codification*

1 *Construction* — The law of marine insurance has been codified by the Marine Insurance Act, 1963.[1] The proper way to construe a codifying statute is in the first instance to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered.[2] "The statute was passed to declare the law. We are bound by it, and can look to nothing else." There are two rules of construction, *viz*, (i) words being themselves precise and unambiguous, they themselves best declare the intention of the Legislature and (ii) alternative constructions being equally open that alternative should be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating.[3]

2 *Scope of the codification* — The Marine Insurance Act, 1963, codifies only those principles of the law which concern, solely with marine insurance but the Act does not provide for rules which are applicable to contracts generally, *e g*, fraud, mistake or illegality, or to those concerning the special subjects, *viz*, shipping, navigation, international law, etc. The Act, therefore, expressly provides that the rules of law, including the law merchant, which applied to contracts of marine insurance, immediately before the commencement of this Act, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.[4]

2 In this Act, unless the context otherwise requires,—

Definitions

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1 *Bank of England* v *Vagliano* (1891) A C 107 145

2 *Bristol Tramways Co* v *Fiat Motors* 79 L J K B 1109 (1910) 2 K B 831; *Abbot* v *Nolsey* (1895) 2 Q B 97 *Robinson* v *Canadian Pacific Rail Co* (1892) A C 481 (P C)

3 *Collector of Customs* v *Digvijay Singh Spinning & Weaving Mills Ltd* 1961 S C 1549 *see* also *Jagannath Agarwala* v *B N Dutta*, 1963 Cal. 26 *Angrej Singh* v *Financial Commissioner* (1962) 2 Punj 766 64 Punj L R 736 *State of West Bengal* v *Indian Iron & Steel Co Ltd* 67 C. W N. 138 *See* also Commentary on the Insurance Act

4 *See* Section 91 of the Act *Also* also *Holmon & Sons Ltd* v *Merchants Marine Insurance Co Ltd* (1914) (K. B 383 (special clause of marine insurance contract applicable to ancillary clause)

(*a*) "contract of marine insurance" means a contract of marine insurance as defined by section 3,

(*b*) "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or other movables, as well as freight payable by a third party, but does not include passage money,

(*c*) "insurable property" means any ship, goods or other movables which are exposed to maritime perils,

(*d*) "marine adventure" includes any adventure where—

(i) any insurable property is exposed to maritime perils,

(ii) the earnings or acquisition of any freight, passage money, commission, profit or other pecuniary benefit, or the security for any advances, loans, or disbursements is endangered by the exposure of insurable property to maritime perils,

(iii) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils,

(*e*) "maritime perils" means the perils consequent on, or incidental to, the navigation of the sea that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints and detainments of princes and peoples, jettisons, barratry and any other perils which are either of the like kind or may be designated by the policy,

(*f*) "movables" means any movable tangible property, other than the ship, and includes money, valuable securities and other documents,

(*g*) "policy" means a marine policy,

(*h*) "ship" includes every description of vessel used in navigation,

(*i*) "suit" includes counter-claim and set off

SYNOPSIS

1 *Definition clause, interpretation of*
2 *"Unless the context otherwise requires"*
3 *"Includes"*
4 *"Contract of Marine Insurance"*
5 *"Freight"*
6 *"Insurable property"*
7 *"Marine adventure"*
8 *"Maritime perils"*
9 *"Movables"*
10 *"Policy"*
11 *"Ship"*
12 *"Suit"*

1 Definition clause, interpretation of —Where a defined expression is used in a context which does not fit in, the context will prevail over the 'artificial concep tions" of the definition clause and the ordinary meaning of the word should be given [1]

2 "Unless the context otherwise requires" —This qualification has to be borne in mind with regard to all the definitions given in the section. If the definition of any word given in this section be found to be not appropriate, such definition should not be adopted The true meaning of any passage, it is said, is to be found not merely in the words of that passage, but in comparing it with other parts of the law, as certaining also what were the circumstances with reference to which the words were used, and what was the object appearing from those circumstances which the Legislature had in view [2] Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter [3]

3 "Includes" —The word must be understood as comprising something more than what is defined It is a word of extension [4]

4 "Contract of marine insurance"—See Notes under section 3 *infra*

5 "Freight"—The definition is taken from the English Statute [5] The word 'freight' ordinarily means money payable to the ship owner for the carriage of goods but the word, as defined, has been extended to include any benefit derived by the ship-owner from the employment of the ship, *e g*, money received from the charterer for the hire of the ship, or benefit derived by him from the carriage of his own goods [6]

The passage money has been excluded from the definition [7] A policy "on passage money" may be an insurance against disbursements in respect of particular passage money but it could not be treated as passage money subsequently earned in respect of other passengers as reducing the loss [8]

6 "Insurable property" means any ship, goods or other movables exposed to maritime perils The definition corresponds to section 3 (2) (*a*) of the English Marine Insurance Act, 1906 The property, over which there is insurable interest should come within the definition but the property must be exposed to maritime perils as defined in clause (*e*) of section 2 of this Act [9]

7 "Marine adventure" is defined to include any insurable property, earnings, acquisition, pecuniary benefits of any kind or liability of any

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1 *Strathern* v *Padden* (1926) S C (J) 9; *see* also *Jobbins* v *Middlesex County Council*, (1949) 1 K B 142 C A; *Lee* v *Showmen's Guild of Great Britain* (1952) 2 Q B 329

2 Lord Blackburn *Riner Wear Com* v *Adamson* (1877) 2 App Cas 743 Lord Halsbury L C *Eastman Co* v *Comptroller of Patents* (1898) A C 576 Luxmoore J, *General Council of Medical Education* v *Dental Board of United Kingdom* (1936) 1 Ch 41 48

3 Lord Davey *Canada Sugar Refining Co* v *Reg* (1898) A C 741 Sankey J *Attorney General* v *Brown* (1920) 1 K B 773 791; 89 L J K B 1178, quoted in Maxwell's Interpretation of Statutes 11th Ed

4 *Cf Dilworth* v *Commissioners of Stamps* 1899 A C 99, 105; *Re Strauss & Co*, 38 Bom L R 1080 1937 Bom 15, *see* also Commentary n the Insurance Act

5 *See* Section 90 Marine Insurance Act, 1906 6 Edw 7 C 41

6 See *Winter* v *Haldimand* (1831) 2 B and Ad 649 *Gorbet* v *Aspinal* (1811) 13 East 323 325 *per* Lord Ellenborough *Flint* v *Flemyng* (1830) 1 B and Ad 43 *Deaux* v *J Anton* (1839) 5 Bing N C 519 *Gulf and Southern S S Co* v *British Traders Insurance Co Ltd* (1930) 1 K B 451

7 See *Denoon* v *Home and Colonial Assurance Co* (1872) L R 7 C P 34

8 *New Zealand Shipping Co Ltd* v *Duke* (1914) 2 K B 682

9 *See* also Notes under 'insurable interest', "ship' insurable' and maritime perils, *infra*

description, subject to "maritime perils." Thus, a carrier of goods by sea, a charter of a vessel and a company laying down an electric cable are all engaged in maritime adventures.[1]

8 **"Maritime perils"** is defined to mean perils consequent or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detainments of princes and peoples, jettisons, barbarity, and any other perils, either of the like kind or which may be designated by the policy.[2]

But the expression "perils of the seas", does not include every casualty which may happen to the subject-matter of the insurance on the sea, it must be a peril of or due to the sea. Hence, it does not cover fire or capture at sea nor any loss proximately caused by insects,[3] or the wilful throwing away of a ship.[4] The term "perils of the sea" refers only to fortuitous accidents or casualties of the seas, and does not include the ordinary action of the winds and waves.[5] The "perils of the seas" would include (i) the foundering of the ship at sea,[6] (ii) collision with another vessel or striking on a sunken rock or other obstruction in fair weather,[7] (iii) damage to cargo by incursion of sea water through holes gnawed by rats,[8] or through cowl ventilators,[9] or through unusual obstruction by ice,[10] or through a value left open by mistake,[11] and (iv) labouring of the ship in rough weather.[12]

9 **"Movables"**.—The definition of the term "movables" has been taken from section 90 of the Marine Insurance Act, 1906 [6 Edw. 7 c. 41]. The definition of "movable property", given in section 3 (36) of the General Clauses Act, X of 1897 as meaning property of every description, except immovable property may be compared with the definition given in this Act.

10 **"Policy"**.—The definition is to be read with sections 24 to 32 and Schedule of the Act.[13]

11 **"Ship"**.—This definition accords with the definition of "ship" given in section 3 (55) of the General Clauses Act, 1897, except the words "not

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1 *Crowley v. Cohen* (1832) 3 B. and Ad. 478 (a case of carrier); *Patterson v. Harris* [1861] 1 B. and S. 336, 355; *Wilson v. Jones* (1867) L. R. 2 Exch. 139 (a case of shareholder in cable company). *See* also section 3 (2) (a) Marine Insurance Act, 1906 (6 Edw. 7 C. 41).

2 *See* also section 3 (2) Marine Insurance Act, 1906 (6 Edw. 7 C. 41).

3 *Scholefield Brothers v. Sturges* (1906) 2 K. B. 665 C. A.

4 *P. Samuel & Co. Ltd. v. Dumas.* (1924) A. C. 431.

5 *Magnay v. Buttemer* (1852) 11 C. B. 876, 881; *Hamilton, Fraser & Co. v. Pandorf & Co.* (1887) 12 App. Cas. 518 C. A.; *Grant, Smith & Co. v. Le Domville, Ltd. v. Scottish Co-operative Dry Dock Co.* (1920) A. C. 162, P. C., where capsizing of a floating dock due to unfitness of its structure was held not to be a loss by perils of the sea, but see *Mountain v. Whittle* (1921) 1 A. C. 615, H. L., where sinking of a houseboat due to entry of water through defective seams while being towed was held loss due to perils of the sea.

6 *Green v. Brown* (1743) 2 Str. 1199; *Naylor v. Read*, (1761) Marshall on Marine Insurance, 4th Ed. 388; *Koster v. Reid* (1826) 6 B. and C. 19.

7 *William France Fenwick & Co., Ltd. v. North of England Protecting and Indemnity Association* (1917) 2 K. B. 522, p. 528; *Pandorf & Co. v. Hamilton Fraser & Co.* (1887) 12 App. Cas. 518 H. L.

8 *Edwards Ralli Mills, Ltd. v. Union Marine and General Insurance Co. Ltd.* (1941) A. C. 55 P. C. (1940) 4 All E. R. 169; *Popham v. Pitcher*, 6 Taunton 370; *Pitcher v. Household Fire Insurance Co.* (1904) 10 Com. Cas. 31.

9 *Blackburn v. Liverpool Brazil and River Plate Steam Navigation Co.* (1902) 1 K. B. 290; also *Rio Ayuri Coal Co. v. Hearn & Co. v. Union Marine Insurance Co. Hall v. Cadiz Steam Tug Co. v. John Chotzis Walton & Co.* (1901) A. C. 362 P. C.

10 *N. B. Nyler & Co. v. Lancashire and General Mercantile Co. Ltd.* (1911) 1 K. B. E. R. 311 D. C.

11 *See* Riddell under these sections and also the commentary on the Insurance Act under the heading Policy.

exclusively propelled by oars "Vessel" is defined to include any ship or boat or any other description of vessel used in navigation

12 "suit"—For set off and counter-claim

MARINE INSURANCE

3 A contract of marine insurance is an agreement whereby the insurer undertakes to indemnify the assured, in the manner and to the extent thereby agreed, against marine losses, that is to say, the losses incidental to marine adventure

Marine insurance defined

SYNOPSIS

1 *Definition of "contract of marine insurance"* 2 *Origin and development* 3 *Contract of indemnity*

1 **Definition, of contract of marine insurance**—The definition contained in the section has been taken from the English Marine Insurance Act, 1906 It is a contract of indemnity, whereby one party, in consideration of a stipulated sum undertakes to indemnify the other against loss arising from marine perils

2 **Origin and development**—During the reign of Charles V in 1551, there was a number of regulations concerning maritime commerce usually known as Caroline Code To this was added several Ordinances in 1565 during the time of Philip II But the celebrated Ordinance which is deemed to be the most complete and most comprehensive of marine laws is of Louis XIV published in 1681

The History of Marine Insurance in England is associated with the history of Lloyds The word "Lloyds" is associated with the name of Edward Lloyd a small coffee house keeper wherein, towards the latter part of the seventeenth century, the commercial community interested in shipping met The Italian merchants who introduced the practice of marine insurance in England were known as Lombards The frequenters of 'Lloyds' Coffee-house were not allowed the privilege of conducting their marine insurance on a monopoly basis and it was in 1720 that the Parliament allowed two more marine insurance companies to be established in London In 1820 an Act was passed by which marine insurance in England was thrown open and thereafter many other insurance companies had been established and those companies together with Lloyds formed the marine insurance market of London Lloyds was incorporated in 1871 under Lloyds Act of that year and the same was amended by Lloyds Act, 1911

Lloyds, as an incorporated Society of individual underwriters, has maintained the practice of Edward Lloyd of providing shipping intelligence

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1 *Cf* section 742 of the Merchant Shipping Act 1894 57 and 58 Vict c 60

2 Section 3 (63) General Clauses Act 1897 *See* also section 48 Indian Penal Code (1860 Act XLV of 1860) section 3 (4) Northern India Canal and Drainage Act VIII of 1873 and section 3 (*f*) Sea Customs Act VIII of 1878

3 *See* Order VIII Rule 6 and Order XX Rule 19 C P Code (V of 1908) *See* also *Harendra* v *Sowrendra* 46 C W N 882 885, *Rambata* v *Sreeramamurthi* 1960 Andh Prā 520 *Williams Bros* v *E T Agius Ltd*, (1914) A C 1510 *Bow McLachlan & Co* v *Camosun & Co* (1909) A C 597

4 *See* section 1 of the Marine Insurance Act, 1906

5 *Williams* v *New England Insurance Co*, C C Mass 29 F Cas No 17 731 quoted in Corpus Juris Secundum Vol 44, p 490

6 Hendrik s Contribution to the History of Insurance *see* also Cunningham Growth of English Industry and Commerce, Vol I

by the publication of Lloyds List and Shipping Gazette The approximate number of underwriting members of Lloyds in April, 1937, was 4,270 The Society also appoints agents in all the principal ports of the world with a view to collect data, such as accounts of arrivals and departures at and from those ports, losses and casualties and other general information relating to shipping and insurance These agents have been held not to be the agents of the underwriters [1]

3 **Contract of Indemnity** —A contract of indemnity is defined to be "a contract, express or implied, to keep a person, who has entered into or who is about to enter into a contract or incur any other liability, indemnified against loss, independently of the question whether a third person makes default "[2] Indemnity has been defined in Indian Contract Act as "a contract by which one party promises to save the other from loss caused to him by the conduct of any other person "[3] But indemnity as applicable to marine insurance must not be an indemnity as contemplated by the Indian Contract Act as the loss in such a contract is covered by the contract itself and such loss is not caused to the assured by the conduct of the insurer nor by the conduct of any other person Brett, L J, observed, with regard to this indemnity, thus "this contract means that the assured, in case of loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified That is the fundamental principle of insurance, and if ever a proposition is brought forward which is at variance with it, that is to say, which either will prevent the assured from obtaining a full indemnity, or which will give to the assured more than a full indemnity, that proposition must certainly be wrong "[4]

It must also be remembered that insurance does not necessarily give a perfect indemnity, but gives sometimes, more and sometimes less This may happen in several cases, but particularly in the case of a valued policy, where the measure of indemnity is fixed by the value [5]

Mixed sea and land risks

4 (1) A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto, but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined

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1 *Wilson* v *Salamandra Assurance Co of St Petersburg* (1903) 88 L T 96 *see* also Commentary on the Insurance Act under section 2 (13 A)

2 Halsbury s Laws of England Vol 15 Art 870

3 Section 124 Indian Contract Act

4 *Castellain* v *Preston* (1883) 11 Q B D 380 386

5 *T T Maurice* v *Goldsbrough Mort & Co* 183 I C 106 P C s 1929 P C 195 199

Explanation —"An adventure analogous to a marine adventure" includes an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit.

SYNOPSIS

1 *Scope*
2 *"Adventure analogous to a marine adventure"*
3 *Perils of rivers, etc*

1 **Scope** —This section is based substantially on section 2 of the English Marine Insurance Act, 1906 The provisions of sub-sections (1) and (2) of this section are the same in sub sections (1) and (2) of section 2 of the English Act Sub section (1) confers discretion to include in a sea insurance to cover against losses on inland waters or on any land risk which should be incidental to any sea voyage Such contract to cover against losses on inland waters or on land risk may be expressly made or may be given effect to without any express terms to that effect if there be any usage of trade Such contract is usually made where transit is partly by sea and partly by land,[1] or by inland navigation[2] Ordinarily a marine insurance is effected only against risks at sea but where the ship's furniture or stores are regularly landed on shore at a certain stage of the voyage they are protected where there is an usage to that effect[3]

Sub-section (2) extends the contract of marine insurance to cover cases, such as (i) where a ship in course of building or (ii) the launch of a ship, or (iii) any adventure analogous to a marine adventure, when expressed in the form of a marine policy The provisions of the Act will apply thereto without altering or affecting any rule of law to any contract of insurance other than a contract of marine insurance as defined in section 3 of the Act

2 **"Adventure analogous to a marine adventure"**—The expression is defined to include an adventure where any ship, goods or other movables are exposed to perils incidental to local or inland transit In U S A perils *ejusdem generis* or inchmaree clause is often found in marine policies which cover loss from unavoidable dangers of rivers, fires and jettisons, where no such clause is made in the policy, it does not cover a loss caused by a peril of the same kind or species Under the English law, the risks enumerated in the policy then customarily in use does not extend to risks of the class stated in the clause[4]

3 **Perils of rivers, etc** —Perils of the rivers, harbours, inland waters, etc, are of the same general character as perils of the sea The words "perils of the river" include the same character of losses as are included within "perils of the sea" and in addition thereto those perils which are peculiar to inland waters[5]

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1 *British and Foreign Marine Insurance Co Ltd v Gaunt* (1921) 2 A C. 41 H L. *Robinson Gold Mining Co v Alliance Insurance Co*, (1904) A C 359 H L *Hyderabad (Deccan) Co v Willoughby* (1899) 2 Q. B 530 *Simon Israel & Co v Sedgwick* (1893) 1 Q. B 303 C A *Rodocanachi v Elliot* (1874) L R 9 C P 518 Ex Ch

2 *Appollinaris Co v Nord Deutsche Insurance Co*, (1904) 1 K B 252 *British and Foreign Marine Insurance Co, Ltd v Gaunt, supra*

3 *Pelly v Royal Exchange Assurance Co* (1757) 1 Burr 341 *Brough v Whitmore* (1791) 4 Term Rep 206

4 *Thames & Mersey Marine Insurance Co v Hamilton Fraser & Co* (1887) 12 App Cas 484 56 L J Q. B 626

5 *Citizens Insurance Co v Glasgow*, 9 Mo 411 *Union Insurance Co v Groom* 4 Bush Ky 289 *Franklin Insurance Co v Humphrey* 32 Am R 78

5 Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

Lawful marine adventure

The section enacts that the subject of a contract of marine insurance must be in respect of a lawful marine adventure and that the contract must also be governed by the provisions of this Act Thus, (i) any ship, goods or other movables exposed to maritime perils or (ii) any earning or requisition of any freight, passage money, commission, profit or other pecuniary benefit or the security for any advances, loan or disbursements is endangered by the exposure of insurable property to maritime perils or (iii) any liability to a third party is likely to be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils, may be the subject of a contract of marine insurance[1] The most usual insurances, it may be noted, are on ship or goods, and freight or profits[2] The section is substantially the same as that of sub-section (1) of section 3 of the English Marine Insurance Act, 1906

INSURABLE INTEREST

6 (1) Every contract of marine insurance by way of wagering is void

Avoidance of wagering contracts

(2) A contract of marine insurance is deemed to be a wagering contract—

(a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest, or

(b) where the policy is made "interest or no interest", or "without further proof of interest than the policy itself", or "without benefit of salvage to the insurer" or subject to any other like term

Provided that, where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer

SINOPSIS

1 *Scope*
2 *Wagering*
3 *Contrast of insurance and wagering contract, difference*
4 *P P I policy*

1 **Scope**—The section enacts that every contract of marine insurance by way of wagering is void This is also the law under the English Act[1] The section further provides that a contract of marine insurance is deemed to be a wagering contract where the assured has no insurable interest as defined by section 7 of this Act and the contract is entered into with no expectation of acquiring such an interest This is also the law in England[2] Similarly, the contract is deemed to be a wagering contract where the policy is made "interest or no interest" or "without further proof of interest than the policy itself" or "without benefit of salvage to the insurer" or subject to any other

1 *See* section 4 (1) Marine Insurance Act 1906

2 *See* sections (2) (a) to the Marine Insurance Act 1906

like term, but where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer The law is also the same under the English law [1]

Under the Marine Insurance (Gambling Policies) Act, 1909, the person who effects "a contract by way of gambling on loss by maritime perils" and the insurer with whom it is effected (when the latter acts knowingly) are guilty of criminal offence punishable on summary conviction [2]

2 **Wagering** —Section 30 of the Indian Contract Act provides that "agreements by way of wager are void", i e , the agreement are such that they have no legal existence at all , in other words, by such agreement no legal relation is created in favour of the one or the other By the word 'wager' is meant "a promise to give money or money's worth upon the determination or ascertainment of an uncertainment , the consideration for such a promise is either something given by the other party to abide the event or a promise to give upon the event determining in a particular way", [3] and further to become a wager there should be attached to the contract 'mutual chances of gain and loss' Thus, wager is "a contract by *A* to pay money to *B* on the happening of a given event in consideration of *B* paying money to him on the event not happening" [4]

Cotton, L J , said that the essence of gaming and wagering was that one party was to win and the other was to lose upon a future event, which at the time of the contract was of an uncertain nature [5] Sir Lawrence Jenkins, C J , said that ' it is the essence of a wager that each side should stand to win or lose according to the uncertain or unascertained event in reference to which the chance of risk is taken " [6]

3 **Contract of insurance and wagering contract, difference** —A contract of insurance is not a wagering contract as it "is the exact opposite of gambling , In gambling two persons deliberately set about to create some hazard for pleasure or profit , they introduce the element of risk where it previously did not exist Insurance however is designed as a hedge against risks which are already present, the object being to neutralize the existing risk " [7] A contract of insurance can be distinguished from a wager by the fact that "the assured is moved to effect insurance by the risk of loss and does not create the risk of loss by the contract itself as in the case of a pure wager [8] Lord Blackburn said "I apprehend that the distinction between a policy and a wager is this—a policy is, properly speaking, a contract to indemnify the insured in respect of some interest which he has against the perils which he contemplates it will be liable to " [9]

In U S A , a 'wager policy' is defined to be one in which the party insured has no interest in the subject of the insurance but only an interest in the loss or destruction of the subject-matter insured or the insured could sustain no possible loss by the event insured against if he had not made such wager or where the policy shows on the face of it that the contract is embodies is really not an insurance, but a wager or it may be defined to be

1 See section 4 (2) (b) and proviso to that sub-section Marine Insurance Act 1906
2 See section 1 (1) and (2) of the said Act 9 Edw 7 c. 12.
3 Anson Contract 17th Ed p 26
4 Pollock Contract 9th Ed p 380
5 *Thacker* v *Hardy*, (1878) 4 Q B D 685, 695
6 *Sassoon* v *Tawsey* [1917] 2 Bom 615 621
7 Robert, Fundamentals of Insurance p. 6.
8 Jones Law of Insurance, p. 6.
9 *Wilson* v *Jones* L R 2 Ex. 152.

a pretended insurance founded on an ideal risk where the insured has no interest in the thing insured [1]

4 P P I Policy —A policy which expressly states "interest or no interest" or "without further proof of interest than the policy itself" or "without benefit of salvage to the insurer" is commonly called a "P. P. I. policy" (that is policy proof of interest) or "an honour or wager policy." Such P P I policies were prohibited by the Marine Insurance Act, 1745-6 (19 Geo 2, c 17) now repealed [2] The provisions of the Gaming Act, 1845 (8 & 9 Vict, c 109) which made all contracts or agreements by way of gaming or wagering null and void applied to all insurances which were really wagers, whether or not they were in the form of P. P I. policies, but a P P I policy is not necessarily inconsistent with the assured having an insurable interest, such, for instance, where a policy is effected by a person who has an insurable interest but who wishes to avoid the difficulty of proving it The policy in such circumstances would not be a wagering contract under the Gaming Act, 1845, although it would be void under the Marine Insurance Act, 1906 [3] The court has no power to treat a P. P I policy valid even with the consent of parties [4]

In U S A a policy is not necessarily a wager policy because it provides insurance under P P I clauses It is only where the parties intend to game that the policy will be treated as a wager Policies containing P P I clauses are deemed policies on interest and the insured is entitled to indemnity only for his actual loss [5]

Insurable interest defined

7. (1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof

SYNOPSIS

1 *Scope*
2 *Insurable interest its nature*
3 *What constitutes insurable interest*
4. *Definition in the section not exhaustive*

1 *Singleton v St Louis Mutual Insurance Co*, 27 Am R 321 *Amory v Gilman* 2 Mass 1 *Sauger v Dodge County Mutual Insurance Co* 37 Wis 503 quoted in 41 C J S 456-497

2 *See Allkins v Jupe* (1877) 2 C P D 375 *Burridge v Man On Insurance Co* (1887) 18 Q B D 346 C A following *Smith v Reynolds* (1861) 1 H & N 221 and *Dr Mullos v North* (1868) L R 3 Exch 185

3 *T Cheshire & Co v Vaughan Brothers & Co*, (1920) 3 K B 240 C A (policy containing P P I clause void although assured might have insurable interest); *Re London County Commercial Reinsurance Office Ltd*, (1922) 2 Ch 67 (premiums on P P I policy returnable) *John Edwards & Co v Motor Union Insurance Co Ltd* (1922) 2 K B 249 (no right of subrogation under P P I policy)

4 *Gedge v Royal Exchange Assurance Corporation* (1900) 2 Q B 214 but see *Buchanan & Co v Faber* (1899) 4 Com Cas 233 where Bigham J treated the policy as if it had contained no P P I clause by consent

5 *Alsop v Commercial Insurance Co* C C Mass 1 F Cas No 252 1 Sumn 451

1 Scope—This section has been taken from section 5 of the English Marine Insurance Act, 1906. Sub-section (1) enacts generally that every person has an insurable interest who is interested in marine adventure, but sub section (2) enacts in particular, that a person is interested in a marine adventure when he stands in any legal or equitable relation to the adventure or to any insurable property, as defined in section 2 (c) of the Act, at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

2 Insurable interest, its nature—The nature of an insurable interest has been explained by Lawrence, J., thus "A man is interested in a thing to whom advantage may arise, or prejudice happen from the circumstances which may attend it, and whom it importeth that its condition as to safety or other quality should continue. Interest does not necessarily imply a right to the whole or part of the thing nor necessarily and exclusively that which may be the subject of privation, but the having some relation to, or concern in, the subject of the insurance, which relation or concern, by the happening of the perils insured against may be so affected, as to produce a damage, detriment or prejudice to the person insuring. And where a man is so circumstanced with respect to matters exposed to certain risks and dangers as to have a moral certainty of advantage or benefit but for those risks and dangers, he may be said to be interested in the safety of, the thing. To be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction."[1] Lord Eldon observed thus "In order to distinguish that intermediate thing between a strict right or a right derived under a contract, and a mere expectation or hope, which has been termed an insurable interest, it has been said in many cases to be that which amounts to be a moral certainty. I have in vain endeavoured however to find a fit definition for that which is between a certainty and an expectation, nor I am unable to point out what is an interest unless it be a right in the property or a right derivable out of some contract about the property insured which in either case may be lost upon some contingency affecting the possession or enjoyment of the property. It is certainly desirable that no purely sentimental interest, such as an expectation or an anxiety, should be made the ground of policy."[2] Lord Blackburn, in *Wilson* v *Jones*, said "I know no better definition of an interest in an event than that by Lawrence, J., that if the event happens the party will gain advantage, and if it is frustrated, he will suffer a loss."[3] Channel, J., said "a contract which would otherwise be a mere wager may become an insurance by reason of the assured having an interest in the subject matter, that is to say, the uncertain event which is necessary to make a contract amount to an insurance must be an event which is *prima facie* adverse to the interest of the assured."[4] Lord Tenterden said "The interest necessary to support an insurance must be of a pecuniary character, that is to say, the assured must stand in such a relation to the event that the subject-matter of the insurance that he must by the happening of the event sustain or be presumed to sustain some pecuniary loss."[5]

3 What constitutes insurable interest?—A precise definition of 'insurable interest' is not possible to say what in all cases will constitute

1 *Lucena* v *Crawford* (1806) 2 Bos and P N R 269 H L at p 302 *see* also *Stanbank* v *Fleming* 11 C B 49 at p 72

2 *Lucena* v *Crawford supra* affirmed in H and L (1808) 1 Taunt 329

3 L R 2 Ex 150

4 *Prudential Insurance Co* v *Inland Revenue Commissioners* (1904) 2 K B 658 663

5 *Halford* v *Kymer* (1830) 10 B and C 724 728 *see* also *Howard* v *Refuge Friendly Society* (1886) 54 L T 644

insurable interest so that a contract can be taken out of the class of wager policies It has been said that an "insurable interest" is in the nature of an inchoate right, ever present for perfection in those who possess the right, but never perfected until all legal requirements have been performed [1] An "insurable interest" is *sui generis*, and peculiar in its texture and operation [2] It can be said as a general proposition that a person has an insurable interest in the subject-matter insured where he has such a relation or connection with, or concern in, such subject matter that he (*i*) will derive pecuniary benefit or advantage from its preservation, or (*ii*) will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against [3]

"The definition of insurable interest has been continuously expanding, and dicta in some of the older cases, which would tend to narrow it, must be accepted with caution" [4] In the United States also great liberality is indulged in determining whether a person has anything at hazard in the subject matter of the insurance [5] and any interest which would be recognised by a court of law or equity is an insurable interest, *i e*, a person must have such a right or interest as the law will recognize and protect [6] A vested or proprietary interest is not essential, but such interest may be merely possessory, inchoate, contingent, defeasible, equitable or expectant In respect of the latter there must be a subsisting right or title in the insured at the time of the loss with respect to the subject out of which the expectancy arises [7] But a mere expectation of profit, without any interest in the goods, will not however be sufficient to give an insurable instrument [8] A commission agent entrusted with goods for carriage has insurable interest when he effects insurance in his own name and pays freight and premium [9]

4 Definition in the section not exhaustive —The definition given in the section of the insurable interest is not exhaustive but it has to be read with sections 9 to 17 of the Act

8 (1) The assured must be interested in the subject matter insured at the time of the loss, though he need not be interested when the insurance is effected

When interest must attach

Provided that, where the subject-matter is insured "lost or not lost", the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not.

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1 *Moseley v American National Insurance Co* 166 S E 441; 167 S C 112

2 *Warnock v Davis* 104 U S 775; *Warren Davis port Fire Insurance Co*, 87 Am R 160

3 *Bird v Central Manufacture Mutual Insurance Co* 120 P 251; *State v City of Cincinnati* 11 N E 2nd 350 *Stockdale v Dunlop* (1840) 6 M & W 224 per Finch J; *Bize ay v Comins* (1802) 2 East 544; *see* also the cases cited under the heading insurable interest its nature

4 *Moran Gallowry v Uzzell*, (1905) 2 K B 555, 563, *per* Walton J

5 *Liverpool & London & Globe Insurance Co v Billing* 10 S E 2d 518; *In re Reynolds* 109 A 60 94 Vt 149

6 *Nusschlag & Co v Atlantic Mutual Insurance Co D S N Y* 43 F Supp 797 affirmed C C A 126 F 2d 834

7 44 C J S p 916 917 and *see* also the cases cited therein

8 *Lucena v Crauford* (1806) 2 Bos & P (N R) 269

9 *Ramji Karamsi v Unique Motors and General Insurance Co Ltd* 52 Bom L R 703; 1951 Bom 347

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss

SYNOPSIS

1 *Scope*
2 *Attaching of interest in other kinds of insurance*
3 *"Lost or not lost" proviso*
4. *No interest at the time of loss, effect, sub-section (2)*

1 **Scope** —The section is substantially the same as section 6 of the English Marine Insurance Act, 1906 The section enacts that for the assured to recover under a marine policy he must have interest in the subject matter at the time of the loss and not when the insurance is effected The proviso to sub section (1) states that where the subject-matter is insured "lost or not lost" the assured may recover although he may not have acquired his interest until after the loss Sub section (2) provides that if the assured has no insurable interest at the time of the loss, he cannot acquire such an interest by any act or election after he is aware of the loss

2 **Attaching of interest in other kinds of insurance** —Unlike the contract of marine insurance, whether or not interest must be shown at the date of loss in other kinds of insurance contract depends on the terms of the contract If the insurer's promise is only to pay an indemnity, it follows that interest at the date of the loss must be shown, but not necessarily a continuity of interest between contract and loss[1] The doctrine that the interest must be shown to be existing at the date of the loss was extended to life insurance contract in *Godsall* v *Boldero*[2] But the decision was overruled in *Dalby* v *The India and London Life Assurance Co*,[3] where it has been said that the interest must subsist at the date of the policy and at that date only[4] The principle covered by the Act of 1774 was applied to other policies including policies on buildings[5]

It may be noted that the nature of interest required must be the same in cases of all contracts of insurance, whether statutory or contractual, but in the cases of statutory interest the time when such interest must attach depends upon the wording of the statue in question Hence it follows that in marine policies interest must be proved at the time of the loss only, in life and accident policies it need be proved at the time of the contract only and in other policies of indemnity, such as fire, burglary and motor insurance policies, interest must normally be proved at the time of the loss but it must also be proved at the time of the contract unless the insurance is within some statute providing otherwise,[6]

3 **"Lost or not lost" proviso** —As a general rule in the case of marine insurance it is the time of the loss which is very important as unless the assured can prove interest at that time he cannot recover But he can recover where he insures "lost or not lost" and acquires an interest after the loss.[7] The

1 *Crozier* v *The Phoenix Insurance* (1870) 2 Hann New Br 200
2. (1807) 9 East 72
3 (1854) 15 C B 365
4 Dalby's case was a life insurance case and the words shall have interest in the Life Insurance Act 1774 were construed.
5 *The Sadler's Co* v *Badcock* (1743) 2 Atp 554 *Waters* v *The Monarch Life* (1856) 5 El & Bl 870, *London and North Western* v *Gen* (1859) 1 El & El 652; *see* also MacGillivray's Insurance Law, Vol 1, 5th Ed pp 182 183
6 *See* Preston and Colinvaux's The Law of Insurance 2nd Ed, p 15
7 *Sutherland* v *Pratt* (1843) 11 M & W 296 (the rule enunciated in this case is incorporated in proviso to S 6 (1) of the Marine Insurance Act, 1906 which is also incorporated in section (1) of S 8 of this Act)

effect of the words "lost or not lost" in the policy is to make the latter retrospective so as to cover past loss or a loss that has already occurred[1] It has been said that the principle that the "policy operates retrospectively to the loading of the insured goods" is inherent in every voyage policy in the Lloyd's form and that the words "lost or not lost" are thus mere repetition of what the policy means without them[2]

It is not a good defence in an action to recover an average loss on a policy "lost or not lost" to say that (i) the plaintiff acquired an interest in the property after the loss occurred or (ii) the goods were totally lost at the time he made the contract to purchase the goods The reason being in case (i), the assured purchased or acquired the goods as sound or undamaged goods and a loss has been sustained by him and in case (ii) the assured purchasing the goods makes him liable for the price[3]

The proviso further lays down that the assured in no case can recover for a loss of which he was aware and the insurer was not, at the time when the contract was effected

4 No interest at the time of loss, effect, sub-section (2)—Sub-section (2) provides that where the assured has no insurable interest at the time of the loss, he cannot acquire such an interest by any act or election after he is aware of the loss[4]

The modern rule in U S A is that it does not require that there be an interest existing at the time the marine insurance is effected, it being sufficient that such interest subsists during the risk and at the time of the loss, at least where the policy is made "for the benefit of whom it may concern", or in equivalent terms It is always necessary that there shall be an insurable interest at the time of the loss But where the policy covers property "lost or not lost" the insured is entitled to recover thereon, although he became interested in the subject matter after a partial loss occurred, unless he purchased with knowledge of the damage,[5]

Defeasible or contingent interest

9. (1) A defeasible interest is insurable, as also is a contingent interest.

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that the might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise

SYNOPSIS

sub-section (2)

1 *Scope*
2 *Defeasible interest*
3 *Contingent interest*
4 *Particular interest, buyer of goods,*
5 *Unpaid vendor's right of stoppage in transitu*

1 *Jivanji Noorbhoy* v *Cowrji Lladhar* 4 Bom. 365) 11

2. *Marine Insurance Co Ltd* v *Crummer* (1944) 2 All E R 197 C A at p 201 *per* Scott J Ll

3 *See* Halsbury's Laws of England (Simonds) 3rd Ed Vol 22, p. 98

4 See *Anderson* v *Morice* (1876) 1 App Cas 713 H L. at p 749 *Stockdale* v *Dunlop* (1840) 6 M & W 224

Mannheim Insurance Co v *Hollander D C N Y.* 112 F 549 *Hopper* v *Robinson Md* 98 U S 528, cited in 44 Corpus Juris Secundus p 917

1 Scope —The section enacts that a defeasible as well as a contingent interest is insurable It particularly provides that where a person has contracted for the purchase of goods, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods or treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise The section is substantially the same as section 7 of English Marine Insurance Act, 1906

2 Defeasible interest —The fact that the interest of the assured is liable to be defeated by a third person or is voidable will be no ground for invalidating a policy Thus, the right of captors to their prize under the Naval Prize Act, 1864 (27 and 28 Vict, c 25) is an insurable interest before condemnation, though defeasible by the release of the Crown or by a sentence of restoration [1]

3 Contingent interest —A bare expectation of acquiring a right is not insurable interest but a right which is contingent upon the happening of some future event or that the chance of it ever coming into possession is extremely remote may be sufficient to create an insurable interest Thus a right to property under a contract or title which is not void but voidable gives an insurable interest in the property until the contract or title is set aside [2]

Some instances of contingent interest being insurable are—

(i) a carrier or other bailee who may become liable to the bailor for the loss of goods by the perils insured against [3]

(ii) any liability to a third party which may be incurred by the owner of property by reason of maritime perils [4]

(iii) a ship-owner having entered into recognisances in the Admiralty Court to pay the salvors of ship and cargo [5] or a ship-owner protecting himself by insurance against charges imposed by statute in respect of the carriage of passengers [6]

(iv) the purchaser of a vessel abroad which is to remain at sellers' risk until delivery [7]

4 Particular interest, buyer of goods, sub-section (2) —Sub-section (2) speaks of particular insurable interest in respect of buyer of goods where the buyer of goods has insured the goods purchased he has insurable interest over those goods in spite of the fact that he elected to reject the goods or treated

1 *Shirling* v *Vaughan* (1809) 11 East 619 *South* v *Thompson* (1811) 13 East 274 284-85 *Dawson* v *Steele* (1840) 6 Bing N C 358 370 *see* also *Hill* v *Secretan* (1798) 1 Bos & P 315 *Dugan* v *Edie* (1788) 2 Park (8th Ed 1812) 914 relating to policy under the Late Insurance Act, 1774

2 *Frierson* v *Brenham*, (1850) 5 La Ann 540 *Pettigrew* v *Grand River Farmers Mutual* (1877) 28 U C (C P) 70 cited in MacGillivray Insurance Law 5th Ed p 188

3 *See* Halsbury's Laws of England (Simonds), 3rd Ed Vol 4 p 194

4 *Crawley* v *Cohen* (1832) 2 B & Ad 478

Joyes v *Kennard* (1871) L R 7 Q B 78 *Stephens* v *Australasian Insurance Co* (1872) L R 8 C P 18 *Hill* v *Scott* (1895) 2 Q B 713 C A

5 *Briggs* v *Merchant Traders Ship Loan and Insurance Association* (1849) 13 Q B 167

6 *Gibson* v *Bradford* (1855) 4 E & B 586, *Wilkes* v *Cooke* (1855) 5 E & B 641, *New Zealand Shipping Co Ltd* v *Duke* (1914) 2 K B 682

7 *Piper* v *Royal Exchange Assurance* (1932) 44 Ll L Rep 103 116 (here the purchaser has an insurable contingent interest in the arrival of the ship but not in the vessel herself until delivery)

them as at the risk of the seller because of the latter's delay in making delivery or otherwise [1]

As to the time when the property in the goods is to pass to the buyer, the Indian Sale of Goods Act provides certain rules for ascertaining the intention when a different intention does not appear from the terms of the contract, or the conduct of the parties [2] In the case of ascertained goods, as soon as the proposal for sale is accepted, the property passes to the buyer who thereupon acquires an insurable interest [3]

Conversely, a vendor of goods, as long as he retains any interest in the property, can insure it to the extent of his interest, but where the property in goods has completely passed from the vendor to the buyer and is at the buyer's risk, the vendor ceases to have any interest [4]

"A contract for the sale of goods to be supplied on board a particular vessel may be so framed that the property in them and the risk of their loss do not pass to the purchaser until a complete cargo has been loaded, or it may be so framed that the property in and the risk as to any part of the goods pass to the purchaser on shipment In the former case the purchaser has no insurable interest until the complete cargo has been loaded,[5] in the latter case he acquires an insurable interest on any part of the goods then shipped [6]

5 **Unpaid vendor's right of stoppage in transitu** —An unpaid seller has his right of stoppage *in transitu* and he can exercise that right when the purchaser has become insolvent but the goods are to be stopped before they get into the possession of the buyer or before the latter transfers them to a sub-purchaser by endorsement of the bill of lading Hence, until and unless the goods in transit are stopped from being got into the possession of the buyer as above an unpaid vendor has no insurable interest [7] Such an interest cannot be acquired after a loss by any election made with knowledge of it [8]

10 A partial interest of any nature is insurable

Partial interest

The section enacts that a partial interest of any nature is insurable To be an insurable interest it is not necessary that the assured must have the full

1 See *Fragano* v *Long* (1825) 4 B & C 219 *Calcutta and Burmah Steam Navigation Co* v *De Mattos* (1863) 32 L J Q B 322 328

2. *See* Ss 20-24 Indian Sale of Goods Act

3 *Brij Coomars* v *Salamander Fire Insurance Co* 32 Cal 816

4 See *Read* v *Cole* (1764) 3 Burr 1512, *North of England Oil-Cake Co* v *Archangel Insurance Co* (1875) L R 10 Q B 249 *Joyce* v *Swan* (1864) 17 C B N S 84, *Sanders* v *Harford* (1859) 29 L J Ex 36 *Seagrave* v *Union Marine Insurance Co* (1866) L R 1 C P 305 *Sparkes* v *Marshall* (1836) 2 Bing N C 761; *Inglis* v *Stock* (1885) 10 App Cas 263 H L.

5 *Anderson* v *Morice* (1875) L R 10 C P 609 Ex Ch approved (1876) 1 App Cas 713 H L. (the House being equally divided) *Piper* v *Royal Exchange Assurance* (1932) 44 Ll L. Rep 103 (vessel to be at seller's risk until delivery in England.)

6 *Colonial Insurance Co of New Zealand* v *Adelaide Marine Insurance Co* (1886) 12 App Cas 128 (P C.) *see* also 3 Aron & Co (*Incorporated*) v *Miall* (1928) 139 L T 562 C A (c i f contract) *Tangiah Insurances Association Ltd* v *Lukmanjee* (1918) A C 585 (P C) (Sale and exchange) and see *Plate American Trading Insurance and Nordhandel Gesellschaft Baecker-Gehr Co* v *Lancashire Hamburg-Amerika Lane and Charles Martin & Co* (1957) 2 Lloyd's Rep 347 Cargo at (allow insured warehouse to warehouse by purchasers cargo delivered short for transit; missing quantity never in transit and never became property of purchasers who therefore had no insurable interest underwriters not liable for missing quantity *see* Halsbury's Laws of England (Simonds) 3rd Ed p 100

7 *Clay* v *Harrison* (1829) 10 B & C 99

8 *See* Note under S 8, *supra*

interest in respect of the property insured Thus a part owner or undivided or hotchpot interest, of or in respect of the subject matter insured, such as, interest of a joint owner, joint tenant or tenant-in common is insurable.[1] So also a portion of the freight at risk on a particular voyage is insurable.[2] The section is substantially the same as section 8 of the English Marine Insurance Act, 1906

In U S A, one who is part owner of a vessel, cargo, or other property may insure to the extent of his interest and he may also insure on his own account any interest he may have by virtue of advances or disbursements made or liability assumed with respect to other shares But a part owner has no insurable interest in respect of the shares of other part owners or person interested.[3] But a part owner may insure for other part owner or owners if authorized by them or subject to their ratification.[4] The ratification may be made even after they have knowledge of a loss.[5] A partner has authority to insure the entire property for the benefit of the firm.[6] So also a general agent may effect valid insurance for his principal.[7] But a stockholder in a corporation owning a ship or cargo or other property has no insurable interest in the corporate property to the extent of his shares.[8]

Reinsurance

11 (1) The insurer under a contract of marine insurance has an insurable interest in his risk, and may reinsure in respect of it

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance

SYNOPSIS

1 *Scope*
2 *Reinsurance, what is?*
3 *Ceding and accepting company*
4 *A contract uberrimae fidei*
5 *Two classes, facultative and treaty*
6 *Pool*
7 *Subject-matter of reinsurance*
8 *Attaching of risk in reinsurance*
9 *Original assured has no interest in reinsurance*
10 *Reinsurance clause in a reinsurance policy*
11 *Statutory obligation of insurer to reinsure*

1 Scope—This section confers on the insurer an insurable interest in his risk It enacts in sub-section (1) that an insurer effecting a contract of marine insurance has an insurable interest in his risk so that he may reinsure the said risk Sub section (2) enacts that the original assured i e with whom interest in respect of reinsurance effected by his insurer but if the policy otherwise provides the original assured may have such right or interest on his insurer's reinsurance The section is substantially the same as section 9 of the English Marine Insurance Act, 1906

1 *Robertson* v *Hamilton* (1811) 14 East 278 *Inglis* v *Stock* (1885) 10 App Cas 263 H L at p 274
2 *Griffiths* v *Bramley-Moore* (1917) 2 Q B D 70 C A
3 See *International Marine Insurance Co* v *Hinmore* 124 Pa 61 *Oliver* v *Greer* 5 Mass 133 *Fleety* v *Western Insurance Co* 35 Am D 543 *Carter* v *Columbia Insurance Co* Secundus at p
4 *Eames* v *Eames* 98 U S 528
5 *Fleety* v *Farmers Fertilizer Insurance Co* 3 Dr
6 *Fleety* v *Commercial Mutual Insurance Co* 34 N Y S 410
7 *Atlantic Marine Assurance Co* v *Life Insurance Co* 2 Am
8 *Sargent* v *Enterprise Fire Insurance Co* C C

2 Reinsurance, what is —Reinsurance is a contract by which an underwriter accepting a risk displaces some portion of it on the shoulder of another *A* insures with *B* for Rs. 10 000 *B* reinsures the same risk with *C* to the extent of Rs 5,000 When the event happens *A* gets Rs 10,000 from *B* and *B* gets Rs 5 000 from *C* *A* cannot claim Rs 5,000 from *C* as that was a distinct contract made between *B* and *C* to which *A* was neither a party nor a privy But where the policy provides that *A* would be entitled, in that case he can recover from *C*

Arnould has defined a contract of reinsurance as "a contract by which in consideration of a certain premium the original insurer throws upon another the risk for which he has made himself responsible to the original assured, to whom, however, he alone remains liable on the original insurance" Whether the contract of reinsurance is a contract of indemnity or an independent contract depends upon the nature of the contract itself[2]

3 Ceding and accepting company —A contract of reinsurance then is an arrangement entered into by one insurance company with another and which the latter makes itself liable for a certain fixed proportion of the insurance granted by the former The company which reinsures some portion of its risk is called the ceding company and the company which accepts such risk is called the accepting company or the reinsurer The risk is known as reinsurance To the ceding company it is known as reinsurance placed and to the accepting company a reinsurance received

4 A contract uberrimae feidi —Like any other insurance contracts it is also a contract *uberrimae feidi* Utmost good faith of the transaction is required to complete the contract Obviously, the reinsurer is not in position to know the risk he undertakes under the contract like the ceding company who undertakes the risk as direct insurance So it is the duty of the ceding company to disclose all the material facts relating to the risk[2]

5 Two classes facultative and treaty —A contract of reinsurance is divided into two broad classes, *viz*, (1) facultative and (2) treaty A *facultative* risk is one which is offered individually to another company which may either accept or reject the same as it may choose A *treaty* is an agreement between two offices usually obligatory in its terms, under which one office is bound to cede and the other office is bound to accept, all risks of a certain nature and for a certain fixed share as laid down in the terms of agreement

A facultative reinsurance is effected after passing through various stages Firstly slips containing only meagre information such as may be available at the time are circulated by the ceding company to the accepting company with which the former usually carries on business of reinsurance Secondly the slip is followed by a 'request note' which is a formal application by the ceding company for reinsurance of a certain definite amount Lastly, a 'cover note' is issued which is a formal acceptance by the accepting company when the contract of reinsurance is complete

6 Pool —Reinsurance of certain kind of insurance business is effected by means of a 'pool' It is an arrangement made amongst a group of offices who agree to put some definite category of risks into hotchpot and to share the aggregate risk Thus where twenty offices agree to pool all business they accept their premiums and liability would be aggregated and if each office

1 *Australian Widows Fund v National Mutual Life etc* (1914) A C 634
2 *Foster v Mentor Life Assurance Co* (1854) 3 E and B 48 *Traill v Baring* (1864) L J Ch 521 *see* also Notes under S *post*

had an equal share, the total share of each would be one twentieth of the whole Forfeiture of a policy unlike insurance policy if no claim is made within a certain period does not apply to reinsurance policy [1]

7 Subject matter of reinsurance —Although the interest of the reassured is different from that of the original assured the subject-matter of the reinsurance remains the same as with the latter, *i e* ship, freight, goods or whatever it may be [2]

8 Attaching of risk in reinsurance —Normally a policy of reinsurance is effected after the original policy but the risk under the reinsurance policy attaches from the same time as the original policy [3] But the liability of the reinsurer to the reassured arises when the liability of the latter to its assured is ascertained For the accrual of cause of action it is not necessary that the reassured has discharged his liability [4]

9 Original assured has no interest in reinsurance —It has already been noticed that sub-section (2) says that the original assured has, unless the policy of reinsurance otherwise provides, no right or interest in respect of such reinsurance Even the reinsurance clause in a reinsurance policy will not prevent the reassured from recovering from his underwriter when the loss happens and even before the reassured has paid his assured, *i e* the original assured [5] But a reinsurer is entitled to the benefit of any compromise made with the original assured [6]

10 Reinsurance clause in a reinsurance policy —Generally a clause to the following effect can be found in a reinsurance policy "Being a reinsurance subject to the same clauses and conditions as the original policy, and to pay as may be paid thereon" Clauses which are inapplicable are not incorporated [7] Where the original policy, *i e* the policy issued in pursuance of a ship being in force at the time when the reinsurance was effected, is varied or altered without the consent of the reinsurer, the reassured is not entitled to recover the loss from the reinsurer [8]

The usual clauses which are incorporated in the original insurance are "continuation clause", the 'warehouse to warehouse clause' and sometimes the "suing and labouring clause" Usual clauses are generally incorporated in the reinsurance policy if not inconsistent [9]

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1 *Himalaya Assurance Co Ltd v Burma Fire and Marine Insurance Co Ltd* 1924 Rang 350

2 *Nelson v Empress Assurance Corporation Ltd*, (1905) 2 K B 281 C A at p 285 per Mathew L J *British Dominions General Insurance Co Ltd v Duder* (1915) 2 K B 394 C A

3 See *Marine Insurance Co Ltd v Grummer* (1944) 2 All E R 197 C A at p 199

4 *Versicherungs and Transport A G Dangwa v Henderson* (1934) 39 Com Cas 154 affirmed (1934) All E R 626 C A

5 *Re Eddystone Marine Insurance Co Ex parte Western Insurance Co* (1892) 2 Ch 423 *see also Law Guarantee Trust and Accident Society Ltd v Munich Reinsurance Co* (1912) 1 Ch 138 *Re Law Guarantee Trust and Accident Society Ltd Liverpool Marine Insurance Co Ltd s case* (1914) 2 Ch 617 C A

6 *British Dominions General Insurance Co Ltd v Duder* (1915) 2 K B 234 C A

7 See *Home Insurance Co v Victoria Montreal Fire Insurance Co* [1903] A C 59 P C

8 See *Lower Rhine and Wesel Insurance Association v Secretary of State* (1922) 2 K B 179 C A applied in *Yorkshire Insurance Co Ltd v Colonial Mutual Fire Insurance Co Ltd* (1923) 2 K B 461 *see also Eastern Marine Insurance Co v Duder* (1915) 2 K B 279 C A *Jones v Eagle Fire Ins Co* (1915) 2 K B 1513

9 *See Jones v Bolton Marine Insurance Co* [1887] 3 T L R 533 *Chesterfield Fire Insurance Co v Commercial Union Fire Insurance Co* (1905) 2 Com Cas 103 *Marine Insurance Co and Lloyd Insurance Co* (1907) 2 Com Cas 69 but for a case where clause to reinsurance *Insurance Co v Fenton Insurance Co* (1907)

When a "suing and labouring clause" is inserted in a reinsurance policy it must be discarded if found inconsistent with written clauses in the policy [1] But in a series of reinsurance, one reinsurer cannot recover from another even if the policy contains a "suing and labouring clause" Thus, where *A*, the original underwriter, reinsures his liability to *B* and *B* in turn reinsures with *C* and when both the policies contain "the suing and labouring clause" this clause will not entitle *B* to recover from *C* in respect of payments which *B* may have to make to *A* by virtue of the said clause being inserted in first re-insurance policy [2]

11 Statutory obligation of insurer to reinsure —The Insurance (Amendment) Act 1961 (No 11 of 1961) makes it obligatory on every insurer to reinsure with Indian reinsurers a percentage not exceeding thirty per cent of the sum assured on each policy [3]

12 The lender of money on bottomry or respondentia has an insurable interest in respect of the loan

Bottomry

SYNOPSIS

1 *Scope*
2 *Loans on bottomry and respondentia*
3 *Interests to be specifically stated in the policy*
4 *Bond must be legally valid*

1 Scope —The section enacts that a person lending money on bottomry or respondentia has insurable interest in respect of the said loan The section is substantially the same as section 10 of the English Marine Insurance Act, 1906

2 Loans on bottomry and respondentia —Bottomry bond is any instrument whereby the master of a sea going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute his voyage [4] Respondentia bond, on the other hand is any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination [5] It follows that loans on bottomry and respondentia give rise to a maritime risk and hence are the subject of insurance by the lenders

3 Interests to be specifically stated in the policy —To enforce a claim under a marine policy in respect of bottomry or respondentia the interests as such must be specifically stated in the policy as a general description such as ship or goods would not be sufficient [6] But if there be any usage of trade a general description of ship or goods may include loans on bottomry or respondentia [7]

4 Bond must be legally valid —In order that an assured may recover under a policy on bottomry or respondentia, the bond must be shown

1 *Western Assurance Co etc v Poole*, (1903) 1 K B 376
2 *Uzielli v Boston Marine Insurance Co* (1884) 15 Q B D 11 C A criticised in *British Dominions General Insurance Co Ltd v Duder* (1915) 2 K B 394 C A see also *Western Assurance Co etc v Poole* (1903) 1 K B 376 *St Ninth Metropolitan Assurance Co Ltd v Crean* (1921) 41 T L R 35 C A
3 *See* S 101A of the Insurance Act as amended by Act No 11 of 1961 *See* also Notes under S 101 A in Part IV A of the Insurance Act in Part I
4 *See* Art 16 of the Indian Stamp Act 1899
5 *See* Art 56 of the Indian Stamp Act, 1899
6 *Glover v Black* (1763) 3 Burr 1394
7 *Gregory v Christie*, (1784) 3 Dong K B 419

to be legally valid, i e creating a maritime risk Thus, where the bond provides that the money is repayable in any event irrespective of whether the property hypothecated is or is not lost on the insured voyage nothing is recoverable under it [1]

13 The master or any member of the crew of a ship has an insurable interest in respect of his wages

Master's and seamen's wages

The section enacts that the master of a ship or any member of her crew has an insurable interest in respect of his wages The section is substantially the same as section 10 of the English Marine Insurance Act, 1906 In England prior to the Act of 1906, insurance of wages by any member of the crew, as distinguished from the master, was held invalid on grounds of public policy [2]

14 In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss

Advance freight

The section enacts that an advance freight is insurable A person advancing the freight has an insurable interest but such freight is insurable only in so far as it is not repayable in case of loss The section is substantially the same as section 12 of the English Marine Insurance Act, 1906 A loan on account of freight repayable absolutely, whether or not there is a loss of ship or goods does not constitute an insurable interest [3] The question as to whether the money advanced is or is not repayable in case of loss depends upon the terms of the charter party or other agreement under which the money is advanced [4] Similarly, a passenger paying his passage money has an insurable interest in it but the money should be stated in the policy as passage money [5]

15 The assured has an insurable interest in the charges of any insurance which he may effect

Charges of insurance

The section enacts that when a person effects any insurance he shall have insurable interest in the charges of that insurance that is to say, he can insure the charges of such insurance This section is substantially the same as section 13 of the English Marine Insurance Act, 1906

16 (1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage

Quantum of interest

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1 *Simonds* v *Hodgson* (1832) 3 B & Ad 50 *Stainbank* v *Fenning* (1851) 11 C B 51 *Stainbank* v *Shepard* (1853) 13 C B 418

2 *See* Arnould on Marine Insurance 14th Ed S 244

3 See *Allison* v *Bristol Marine Insurance Co* (1876) 1 App Cas 209 H L

4 See *De Swiniz* v *Hallidall*, (1815) 4 M and S 37 *Mansfield* v *Maitland* (1821) 4 B & Ald 582 585 *Wilson* v *Martin* 7 E & B 633 *Droege* v *Suart The Karnak* (1869) L R 2 P C 505; *Allison* v *Bristol Marine Insurance Co* (1876) 1 App Cas 209 H L pp 222, 229 234

5 *Denson* v *Home and Colonial Assurance Co*, (1872) L R 7 C P 341

(2) A mortgagee, consignee, or other person having an interest in the subject matter insured may insure on behalf of and for the benefit of other persons interested as well as for his own benefit

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable to indemnify him in case of loss

SYNOPSIS

1 *Scope*
2 *Insurable interests of mortgagor and mortgagee*
3 *Insurable interest of consignee*
4 *Person entitled to be indemnified by another*

1 **Scope** —This section speaks of particular interests of mortgagor, mortgagee, consignee or other person having an interest in the subject matter insured and the owner of insurable property entitled to be indemnified by another in case of loss In stating the quantum of interest of those persons sub-section (1) enacts that the mortgagor has an insurable interest in the full value of the subject matter mortgaged, while the mortgagee has such interest to the extent of the sum due or to become due under the said mortgage This sub section corresponds to sub-section (1) of section 14 of the English Marine Insurance Act, 1906.

Sub section (2) speaks of the quantum of interest of a mortgagee, consignee or other person having an interest in the subject matter insured and confers the right to insure on behalf of himself as well as on behalf of and for the benefit of other persons interested therein This sub-section corresponds to sub-section (2) of section 14 of the said English Act

Sub-section (3) provides that the owner of insurable property has an insurable interest in respect of the full value of the said property in spite of the fact that some third person may have agreed, or is liable, to indemnify him in case of loss This sub-section corresponds to sub-section (3) of section 14 of the English Marine Insurance Act, 1906

2 **Insurable interests of mortgagor and mortgagee** —The mortgagor of a property having mortgaged same to its full value has insurable interest in its full value as, in case of loss he would only be deprived of the property but his liability for the mortgage debt would remain to the mortgagee[1] A mortgagor should hold the proceeds of insurance in trust for mortgagee when he covenants to insure the mortgaged property on account of the mortgagee[2]

Where the mortgage intends to insure and in fact insures for himself and also for the benefit of the mortgagor, he is entitled to insure for the full value

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1 *Aston v Campbell* (1779) 4 Bro Parl Cas 476; *Ward v Beck* (1863) 13 C B N S 668 where it has been said that an instrument which in form is an absolute transfer can be shown to be a mortgage

2 *Lidbetter v Lee* (1850) 4 De G and Sca. 106 at p 119 *Swan and Cleland v Greving Dock and Slip Way Co v Maritime Insurance Co & Cranbrae* (1907) 1 K. B 116 121 *see also Levy & Co v Merchants Marine Insurance Co* (1885) 52 L. T 263

of the property, but any amount payable under the policy over and above his mortgage debt should be held by him in trust for the mortgagor [1]

In this connection section 72 of the Transfer of Property Act (IV of 1882) may be referred where a mortgagee has been given certain right to insure and keep insured against loss or damage by fire the whole or any part of the mortgaged property Moreover, that section does not authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is by that section authorized to insure

3 **Insurable interest of consignee** —A person in whose favour goods have been consigned and making advances on them has insurable interest in respect of the goods so consigned So also an indorsee of a bill-of-lading to whom a general balance is due or a consignee who has a lien at the time of loss has insurable interest to the extent of the balance or lien [2] Such insurance can be effected both for the consignee or indorsee himself and for the consignor averring the interest to be in himself and also in other party interested therein [3]

A consignee having merely a bare right to take possession at the time of loss can recover on a policy only on two conditions, viz , (i) that he alleges the interest in the consignors and (ii) he proves that the consignors have authorised or subsequently adopted, the policy [4]

Even a consignee has an insurable interest in his commission only when he has a binding contract for consigning the cargo to him at the time of the loss [5]

In U S A , a consignee who has no interest in the goods consigned cannot insure them on his own account but a consignee who has made advances, or has accepted drafts or bills of exchange against shipments, or has incurred liability with respect to, or is in possession of, goods or has power to sell, has an insurable interest in them A consignee who has resold goods, has an insurable interest in them before delivery although he has assigned bills-of-lading to the buyer [6]

A *factor* has an insurable interest in goods on which he has a lien for advances [7]

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1 *Irving* v *Richardson* (1831) 2 B & Ad 193 *Castellain* v *Preston*, (1883) 11 Q. B D 380 per Bowen L J *Carruthers* v *Sheddon* (1815) Taunt 14 17 *Chartered Trust and Executor Co* v *London Scottish Assurance Corporation Ltd* (1923) 39 T L R 608

2 *Elsworth* v *Alliance Marine Insurance Co* (1873) L R 8 C P 596 42 L J C P 305

3 *Wolf* v *Horncastle* (1798) 1 Bos & P 316 126 E R 924 *Hull* v *Sereton* (1798) 1 Bos and P 315 *Robertson* v *Hamilton* (1811) 14 East 522 *Carruthers* v *Sheddon* (1815) 6 Taunt 14 *Spittle and* v *Pratt* (1843) 12 M and N 16 *Hibbert* v *Carter* (1787) 1 Term Rep 745 *Castellain* v *Preston* (1883) 11 Q. B D 380 C A at p 398 per Bowen L J

4 *Lucena* v *Craufurd* (1806) 2 Bos & P N R 269 H L per Lord Eldon *Sengsons* v *Union Marine Insurance Co* (1866) L R. 1 C P 305 at pp 319 320 per Willes J see also *Elsworth* v *Alliance Marine Insurance Co* (1873) L R 8 C P 596 where the Court of Common Pleas was equally divided on the question as to whether a consignee to whom the legal property in the goods has not passed at the time of the loss can recover the full value on averring interest in himself or whether he should also aver the interest of others

5 See Observations of Mathew J in *Wolff & Co Ltd* v *Weir & Co*, [1899] 5 Com Cas 216 at p 223 *Fenn* v *Ivins*, (1850) 1 Camp 513 *Buchanan & Co* v *Peterham* J (1899) 4 Com Cas 222, 228 per E S

6 *See Tappan* v *Adams*, 2 Mass *Aldrich* v *Equitable Safety Ins Co*, Mass 1 *Ins Cas*, 15 *Mutual Security Co* v *Lucas*, Col 39 *Ins Cas*

7 *Pond* v *Fame Insurance Co*, *Ins Cas*

4 Person entitled to be indemnified by another —The owner of insurable property does not lose his insurable interest[1] on the full value of his property only because some other person has agreed or makes himself liable to indemnify the owner in case of loss This is what sub section (3) provides Thus, where the owner of a ship lets her out to a charterer under a covenant that the latter would, in case of loss, pay the owner the full value of the ship even then the owner has his right to insure her to the full value, the reason being that the owner may not exclusively rely on the credit of the charterer[1] Similarly, the owner of goods has the right to insure them in respect of their full value and can recover the loss from the underwriter even though the carrier has made himself liable to indemnify the owner for those goods against their loss So also the carrier has insurable interest in respect of the goods he agrees to carry[2] But in these cases the underwriter has the right of subrogation in the rights of the assured against the party liable to indemnify him[3]

In U S A, a carrier or other bailee has an insurable interest in property in his custody In general, the owner or part owner of an interest in property has an insurable interest under the law of Marine Insurance Also, a trustee, *cestui que trust*, surety, assignee or assignor for benefit of creditors and the captors of a vessel or cargo may have an insurable interest But neither the master nor the ship's husband ordinarily has an insurable interest in the vessel or cargo by virtue of his position[4]

17 Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect

Assignment of interest

But the provisions of this section do not affect transmission of interest by operation of law

SYNOPSIS

1 *Scope*
2 *Assignment of interest is not assignment of policy*
3 *Exception, transmission of interest by operation of law*

1 Scope —The section enacts that where the assured assigns or parts with his interest in the subject-matter insured it does not automatically transfer to the assignee his rights under the contract of insurance Such transfer of his rights under the contract of insurance can be made or is to be deemed as made where there is an express agreement to that effect and such intention can be gathered from the terms thereof by implication The only case in which such automatic transfer can be recognised in case of transmission of interest by operation of law The section corresponds to section 15 of the English Marine Insurance Act, 1906

2 Assignment of interest is not assignment of policy —The section illustrates that a marine policy is not an incident to the property insured and hence a transfer of the property insured does not as a matter of course effect

1 *Hobbs v Hannam* (1811) 3 Camp 93
2 *See Hull v Scott* (1895) 2 Q B 713; *Crawley v Cohen* (1832) 110 E R 172 *see also British & Foreign Marine Insurance Co v I G N & Ely Co*, 9 I C 364; *Dhar v Ahmad Bux* 1933 Cal 735
3 *See* Notes under S 79 *infra*
4 Corpus Juris Secundum Vol 44 pp 917—921

the transfer of a policy to the assignee Thus where he transfers the whole of his interest in the property insured before the loss occurs without an assignment of the policy or without an agreement to assign or to hold the policy for the benefit of the transferee, none is entitled to recover under the policy [1] But the case would be otherwise where he transfers some portion of his interest, for instance, where he mortgages or pledges the insured property [2]

In U S A, an assignee for the benefit of creditors has an insurable interest in the assigned property, as has also the assignor, at least, if the property assigned is of greater value than the amount of his debt [3]

3 Exception, transmission of interest by operation of law —The provisions of the section will have no application when there is a transmission of interest by operation, law, that is to say, when there is a transmission of interest by operation of law of the person being clothed with such interest becomes entitled to recover under the policy

'Transmission of interest by operation of law' means where the interest gets transmitted by operation of law, such as, by reason of the owner's insolvency or death or by reason of an involuntary sale by Court or otherwise

INSURABLE VALUE

Measure of insurable value

18 Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows

(1) In Insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions, and stores for the officers and crew, money advanced for seamen's wages, and other disbursements if any incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, in the case of a ship driven by power other than steam includes also the machinery and fuels and engine stores if owned by the assured, and in the case of a ship engaged in a special trade, includes also the ordinary fittings requisite for that trade

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance,

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses

1 *North of England Oil Cake Co* v *Archangel Insurance Co* (1875) L R 10 Q B 249
2. *Hibbert* v *Carter* (1787) 1 Term Rep 745 *Alston* v *Campbell* (1779) 4 Bro Parl Cas 476
3 See *Pike* v *Merchants Mutual Insurance Co* 26 La Ana 392 *Lawrence* v *Commonwealth Insurance Co* 19 Pick 81

of and incidental to shipping and the charges of insurance upon the whole

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance

SYNOPSIS

1 *Scope and object*
2 *Rules for measuring insurable value*
3 *When the insurance is on ship, determination of insurable value*
(i) *In case of steamship owned by the assured*
(ii) *In case of a ship driven by power other than steam owned by the assured*
(iii) *In case of ship engaged in a special trade*
4 *When the insurance is on freight, determination of insurable value*
5 *When the insurance is on goods or merchandise, determination of insurable value*
6 *When the insurance is on any other subject-matter, determination of insurable value*
7 *Insurance charges*
8 *U S A*

1 Scope and object —The section lays down how the insurable value of the subject matter insured has to be ascertained The ascertainment of such value has to be determined according to the provisions laid down in clauses (1) to (4) of the section Clause (1) speaks of such ascertainment of value when the insurance is on ship and for the purpose ship has been classified into three classes viz , (i) steamship, (ii) ship driven by power other than steam, and (iii) a ship engaged in a special trade Clauses (2) to (4) speak of insurance on freight, whether paid in advance or otherwise, insurance on goods or merchandise and on any other subject matter respectively It may be noticed that in all cases the section expressly enacts that the assured has an insurable interest in the charges of any insurance that he may effect

The object of the section seems to be to lay down the procedure for determining the measure of indemnity in the case of an unvalued policy and also in the case of a valued policy where the valuation is not conclusive or has to be apportioned 'In policies on ship or goods it is generally assumed that the object of the insurance is to put the assured in the event of loss, in the same position as he would have occupied if he had never embarked on the insured adventure but this assumption cannot, from the nature of the case, apply to policies on profits, commissions, freight, etc , nor to valued policies on ship or goods "[1]

The section corresponds to section 16 of the English Marine Insurance Act, 1906

2 Rules for measuring insurable value —The rules for determining the insurable value of the subject-matter insured have to be followed as laid down in clauses (1) to (4) of this section, But the rules are subject to any express provision or valuation in the policy, that is to say, where there is an express provision in the policy as to how the insurable has to be determined that provision has to be resorted to in determining the insurable value or where the valuation is expressly given in the policy, that valuation has to be adhered to In the absence of any express provision or valuation in the policy rules laid down in the section have to be followed

1 Halsbury s Laws of England Simonds 3rd Ed , p 127

3 When the insurance is on ship, determination of insurable value —Such value is the value, at the commencement of the risk, of the ship including the following (*a*) (i) her outfit, (ii) provisions and (iii) stores for the officers and crew, (*b*) money advanced for seamen's wages, (*c*) other disbursements, if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, and (*d*) the charges of insurance upon the whole

(i) *In case of steamship owned by the assured* —Such value, besides what has been stated above, will also include (*a*) the machinery, (*b*) boilers, and (*c*) coals and engine stores

(ii) *In case of a ship driven by power other than steam owned by the assured* — Such value besides the value of the ship including outfit, etc, stated above, will also include (*a*) the machinery and fuels, and (*b*) engine stores

(iii) *In case of ship engaged in a special trade* —Such value besides the value stated above, will also include the ordinary fittings requisite for that trade

The expression "at the commencement of the risk" should mean at the commencement of the risk at each stage of the voyage

The word "outfit" in whaling voyages includes the fishing stores of the ship employed, that is to say, all the instruments and apparatus requisite for taking the fish and preparing and bringing home the proceeds [1] A ship employed in the Black Sea grain trade, separation cloths and dunnage mats are included in the term "furniture" [2]

4 When the insurance is on freight, determination of insurable value —When the insurance is on freight, whether such freight is paid in advance or otherwise, the insurance value is the gross value of the risk of the assured plus the insurance charges This is what is provided in clause (2) of this section which corresponds to section 16 (2) of the English Act and the law before the latter Act was the same [3] A charterer subletting the ship is entitled to recover the whole freight and the freight which he would have to pay to the shipowner should not be deducted [4]

5 When the insurance is on goods or merchandise, determination of insurable value —When the insurance is on goods or merchandise the insurable value is (i) the prime cost of the property insured, plus (ii) the expenses of and incidental to shipping, and (iii) the charges of insurance upon the whole

The words "prime cost" mean the prime cost to the assured at or about the time of shipment, or at any rate at some time when the prime cost can

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1 *Hill* v *Patten* (1807) 8 Fast 373 at p 375

2 See *Hogarth* v *Walker* (1900) 2 Q B 283 C A *see* also *Haddock* v *Indemnity Mutual Marine Insurance Co* (1895) 1 Q B 836 affirmed (1895) 2 Q B 380 for bunker coal and stores *New Liverpool Eastham Ferry and Hotel Co Ltd* v *Ocean Accident and Guarantee Corporation Ltd* (1929) 35 Com Cas 37 C A for anchors and chains to which a coal hulk was moored *Palpen Shipping Co Ltd* v *Commercial Union Assurance Co Ltd* (1943) K B 161 (1943) 1 All E R 162 for flying boat

3 *Forbes* v *Aspinall* (1811) 13 East 323 326 *Palmer* v *Blackburn* (1822) 1 Bing 62

4 *United States Shipping Co* v *Empress Assurance Corporation* (1907) 1 K B 259 affirmed on appeal (1908) 1 K B 115 C A *per* Channell, J

be reasonably deemed to represent their value to their owner at the date of shipment [1]

6 **When the insurance is on any other subject matter, determination of insurable value** —When the insurance is on any other subject matter, other than those enumerated above, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance

7 **Insurance charges** —The mode in which insurance charges are insured is as follows If the premium of insurance, together with stamp duties and other charges of insurance, amount to r per cent, and if the possible loss amount to a sum S, then the total amount required to be insured would be

$$S \times \frac{100}{100 - r}$$ [2]

8 **U S A** —In U S A a stipulation fixing in advance the value or the insured's interest is, in general, conclusive within the limits of the operative effect of such stipulation But if the policy is not valued, the real value of the property insured or of the insured s interest must be shown In ascertaining the value, *of a vessel* her value is to be taken as at the commencement of the risk including stores wages paid in advance if such payment is customary, the insurance premium and the commission on such premium, *of cargo*, the value of the goods at the time and place of shipment has been regarded as controlling in determining the amount of loss or the prime cost or invoice value of the goods according to some authorities or the market value at the time and place of shipment according to other authorities, and *of freight*, the value is the gross amount of freight contracted to be paid [3]

DISCLOSURE AND REPRESENTATIONS

19 A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith be not observed by either party, the contract may be avoided by the other party

Insurance is uberrimae fidei

Contract of marine insurance is a contract *uberrimae fidei* In ordinary contract the principle is that no party should voluntarily furnish to the other any information which although known to him but not known to the other even though such information if received could have influenced the judgment of the other In such cases the parties are supposed to be on equal footing, understanding and experience and each is supposed to trust to his own skill and judgment and therefore unless there is a duty on the part of one of them to disclose to the other party fact within his knowledge that other cannot complain of the silence of the party, though it be as to facts likely to affect his willingness to enter into the contract [1]

But a departure is made from the general rule of *caveat emptor* in case of insurance contracts When a duty is cast upon the assured to disclose all material facts known to him but unknown to the insurer, he is bound to tell the latter everything which may be supposed likely to affect his judgment, such a contract is technically called a contract *uberrima fides*

The fundamental principle of a contract of marine insurance is that it is a contract *uberrima fides*, that is such contract is based on the utmost good

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1 *Williams v Atlantic Assurance Co Ltd* (1933) 1 K B 81 C A at p 102 *per* Green L J

2 Arnould on Marine Insurance 14th Ed Ss 362 363

3 *See* 45 Corpus Juris Secundus pp 1132 1136

faith of the parties and if either party fails to observe the utmost good faith, the contract can be avoided by the other party This principle has been enacted in the section which corresponds to section 17 of the English Marine Insurance Act, 1906 Thus even where a contract of marine insurance is concluded by the acceptance of the proposal and at the time the assured knew of the loss of the property insured the underwriter has his right to avoid the contract Similarly, where a underwriter knew that the insured ship had safely arrived at the time when the insurance is made, the assured has the right to avoid the contract and is entitled to the return of the premium [1]

In U S A, a contract of insurance is a voluntary commercial contract governed by the rules which govern other contracts It is a conditional, personal contract both executory and executed Being a voluntary contract, as long as the terms and conditions made therefore are not unreasonable or in violation of legal rules and requirements, the parties may make it on such terms, and incorporate such provisions and conditions, as they see fit to adopt It has also been said that insurance policies are traditionally contracts *uberrima fides* [2]

Disclosure by assured

20 (1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him If the assured fails to make such disclosure, the insurer may avoid the contract

(2) Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk

(3) In the absence of inquiry the following circumstances need not be disclosed, namely,—

(*a*) any circumstance which diminishes the risk,

(*b*) any circumstance which is known or presumed to be known to the insurer The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business as such, ought to know,

(*c*) any circumstance as to which information is waived by the insurer,

(*d*) any circumstance which it is superfluous to disclose by reason of any express or implied warranty

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1 *Carter* v *Boehm* (1766) 3 Burr 1905 1909 *per* Lord Mansfield, C J

2 See *Jones* v *Bankers Life Co* C C A N C 131 F 2d 989 *Gates* v *General Casualty Co of America* C C A Cal 120 F 2d 925 *Moore* v *Pilot Life Insurance Co* C C A S C 86 F 2d 197 *Isaacson Iron Works* v *Ocean Accident & Guarantee Corporation* 191 Wash 221 *Lakshmi Insurance Co, Ltd* v *Bibi Padmawati* I L R (1961) Punj 353 : 63 Punj L R 251 1961 Punj. 253

(4) Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact

(5) The term "circumstance" includes any communication made to, or information received by, the assured

SYNOPSIS

1 *Scope*
2 *Before the contract is concluded*
3 *Material circumstance, meaning of*
4 *Circumstance deemed to be known by the assured*
5 *Prudent insurer, test*
6 *What circumstances are material?*
(i) *Over-insurance*
(ii) *Facts affecting subrogation rights*
(iii) *Title to the property*
7 *Materiality, a question of fact*
8 *Matters not material need no disclosure*
9 *Some instances of matters not material*
10 *U S A*

1 Scope—The section enjoins on the assured to disclose every material circumstance known to him or is deemed to be known to him in the ordinary course of business to the insurer lest the latter may avoid the contract Such disclosure has to be made before the contract of marine insurance is concluded Sub-section (1) is mandatory and the failure to carry out the mandatory provisions of this sub-section makes the contract voidable at the option of the insurer

Sub-section (2) enacts what circumstance is material sub section (4) says that whether a circumstance is material or not is a question of fact and clauses (*a*) to (*d*) of sub-section (3) speak of circumstances which need not be disclosed Sub-section (5) includes within the terms "circumstance" any communication made to or information received by the assured

The section corresponds to section 18 of the English Marine Insurance Act, 1906

2 Before the contract is concluded—See Notes under section 24, *infra*

3 Material circumstance, meaning of—A circumstance will be material which would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk, and its materiality is, in each case, a question of fact, *i e*, whether a particular circumstance is or is not material has to be decided with the particular facts and circumstances of that case

Every communication made to the assured or every information received by him will be a 'circumstance" within the meaning of the term [1]

4 Circumstance deemed to be known by the assured—The insurer is entitled to assume as the basis of the contract between him and the assured that the latter will communicate to him every material fact of which the assured has, or in the ordinary course of business ought to have knowledge and the latter will take the necessary measures by the employment of competent and honest agent to obtain through the ordinary channels of intelligence in use in the mercantile world all due information as to the subject

1 See *Vijayakumar v New Zealand Insurance Co Ltd* 56 Bom L R 941 1954 Bom 347, fire insurance.

matter of the insurance The material facts are as to the subject-matter, the ship and perils to which the ship is exposed but the name of the assured need not be disclosed unless asked for.[1]

5 **Prudent insurer, test**—Sub-section (2) provides that everything is material which will guide a prudent insurer in fixing the premium or determining whether he will take the risk

In determining the question whether a particular fact is one which is material and as such should be disclosed, the test to be applied is not what the assured thinks,[2] or even what the insurers think,[3] but whether a prudent and experienced insurer would be influenced in his judgment if he knew of it.[4]

6 **What circumstances are material?**—Apart from the prudent insurer test as stated above, it is not every circumstance which increases the risk that is material but there must be a probability that the insurer would attach some importance to it in assessing the premium.[5] A state of circumstances is not material simply because it causes the loss in question.[6] In determining whether any given circumstance is material, one should consider the circumstances existing at the time when that circumstance ought to be disclosed, i.e. before the contract is concluded, and not their results.[7]

Circumstances may be material either because they render the subject-matter insured exceptionally liable to destruction by the peril insured against as stated in *Bupe* v *Turner*,[8] or because they indicate that the proposer is not a person whose proposal may be accepted as a matter of course without careful consideration The latter circumstance relates to "moral hazard", and the assured is bound to disclose (i) previous losses and claims under other policies[9], (ii) any changes of name on his part[10], and (iii) his nationality and racial origin.[11]

A mere ignorance of materiality and not the ignorance of material circumstance will be no excuse to the assured even though he may have acted

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1 *Glasgow Assurance Corporation* v *Symondson & Co* (1911) 104 L T 254 at p 257 *per* Scrutton J *see* Halsbury's Laws of England Simonds 3rd Ed Vol 22 p 112

2. *Lindenau* v *Desborough* (1828) 8 B and C 586 *per* Bayley J at p 592 and *per* Littledale J at p 593 *Dalglish* v *Jarvis* (1850) 2 Mac and G 231 *Bates* v *Hewitt* (1867) L R 2 Q B 595 607-8 *per* Cockburn C J *London Assurance* v *Mansel* (1879) 11 Ch D 363 368 *per* Jessel M R *Re Yager and Guardian* (1912) 108 L T 32 44-45 *per* Channell J *Brownlie* v *Campbell* (1880) 5 App Cas 925 954, *per* Lord Blackburn *Beauchamp* v *National Mutual* (1877) 3 All P R 19 22 *per* Finlay J

3 *See* Cockburn C J in *Bates* v *Hewitt* (1867) L R 2 Q B 595 *Scrutton* J in *Glasgow Assurance* v *Symondson* (1911) 104 L T 254 257

4 *Ionides* v *Pender* (1874) L R 9 Q B 531 *Tate* v *Hyslop* (1885) 15 Q B D 368 379 *per* Bowen L J *Ewart* v *Garnett* (1880) 6 Q B D [illegible] Baggallay L J but *see* *Lord* v *Invicta* (1816) Holt N P [illegible] *Seaton* v *Perks* (1833) 6 C. P. [illegible] *Rennie* v. *Manchester & London* (1[illegible] 5 F and F. 447 *Joel* v *Law Unit.* (1[illegible] 2 K. B. 863 883, *Becker* v *Marshall* (1[illegible] 11 L. L. R. 413 414 where it [illegible] that the test is what would [illegible] assured could [illegible]

5 *Dawson* v *Bunbie* (1[illegible] K. C. 413, 420-422 *per* Lawrence J.

6. *Ibid.*

7 *Seaton* v *Burnand* (1[illegible] A C 135.

8. (1[illegible] 5 Moore 339-342, 372.

9 *Cazenove* v *Carlisle* (1921) 2 K. B. [illegible] *Morgan* v *Eagle Star* (1[illegible] [illegible] *Parker* v *Marmaduke* [illegible] L. R. 417 *Bazett* v. *Empire* [illegible] L. R. 98 *Jones* v. *Provincial* [illegible] L. L. R. 455 *Simm* [illegible] L. L. R. 557 *Cox* v *Cox* (1933) [illegible] *Le Grove* v *Lucena* [illegible] *Cook* (1[illegible] L. [illegible] *Edmonds* (1922) 2 K. B. [illegible] *Ewart* v *Pelmé* (1[illegible] [illegible] v *Morelli* (1[illegible] [illegible]

in perfect good faith [1] It is of no consequence whether the omission to communicate a material fact arises from intention or indifference or mistake, if the assured knew of the circumstance in question [2]

(i) *Over-insurance* —Deliberate and intentional over insurance has been held to be a material fact which should be disclosed, specially where the policy is a valued one [3] Even in case of an unvalued policy over insurance may be a material fact [4]

(ii) *Facts affecting subrogation rights* —Facts affecting the right of subrogation of the insurer may be material [5]

(iii) *Title to the property* —In America, the Courts have regarded policies without interest as contrary to public policy [6]

7 **Materiality, a question of fact** —The question of materiality is a pure question of fact in each case [7] Hence the decided cases give no more than an indication of what conclusion a Court or arbitrator would reach in any particular case [8]

8 **Matters not material need no disclosure** —There are certain circumstances which, in the absence of inquiry, need not be disclosed Thes circumstances are (*a*) any circumstance which diminishes the risk, (*b*) any circumstance which is known or presumed to be known to the insurer, (*c*) any circumstance to which information is waived by the insurer, and (*d*) any circumstance which it is superfluous to disclose by reason of any express or implied warranty These excepted circumstances are taken from the judgment of Lord Mansfield in *Carter* v *Boehm* [9]

9 **Some instances of matters not material** —(i) A circumstance which diminishes the risk or a circumstance which may fairly be assumed to be known to the underwriter [10]

(ii) General topics of speculation, such as natural or political perils [11]

(iii) Any estimate formed by other underwriters of the risk or that they have declined [12]

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1 *Joel* v *Law Union* (1908) 2 K B 863 *Happ* v *De Rongemont* (1929) 34 Com Cas 291 298

2. *Proudfoot* v *Montefiore* (1867) L R 2 Q B 511 519 *Blackburn* v *Vigors* (1887) 12 App Cas 531 537 541

3 *Ionides* v *Pender* (1874) L R 9 Q B 531 *Hoff* v *De Rongemont* (1929) 34 Com Cas 291, *Haase* v *Evans* (1934) 48 Ll L R 131 *Bruton* v *Royal* (1886) 4 F and F 905 *Thames and Mersey Marine Insurance Co Ltd* v *Gunford Ship & Co Ltd Southern Marine Mutual Insurances Association* v *Gunford Ship Co Ltd* (1911) A C 529

4 *Williams* v *Atlantic Assurance Co Ltd* (1933) 1 K B 81 C A

5 *Thames and Mersey Marine Insurance Co Ltd* v *Gunford Ship Co Ltd supra Hoff* v *De Rongemont* (1929) 34 Com Cas 291 *supra* owner of goods making a special contract with a carrier relieving him of all liability

6 *Warnock* v *Davis* (1881) 104 U S 775

7 *Anderson* v *Fitzgerald* (1853) 4 H L C 484, *Hears* v *Bremridge* (1872) 8 Ch App. 22 *Glicksman* v *Lancashire & General* (1927) A C 139 144 *per* Viscount Dunedin

8 *Morrison* v *Muspratt* (1827) 4 Bing 60 *Lindenau* v *Desborough* (1828) 8 B & C 586

9 (1766) 3 Burr 1905 at p 1910

10 *Foley* v *Tabor* (1861) 2 F and F 663 672, *per* Erle C J

11 *Carter* v *Boehm* (1766) 3 Burr 1906 *Astor & Co* v *Blundell* (1896) 1 Q B 123 C A. at p 129

12 *Lebon & Co* v *Straits Insurance Co*, (1894) 10 T L R 517 C A *Glasgow Assurance Corporation Ltd* v *William Symondson & Co*, (1911) 16 Com. Cas 109 119

(iv) information being the subject of warranty, *e g*, in a voyage policy, the information relating to the ship's unseaworthiness ,[1]

(v) the name or the previous history of the master of a ship is not in the ordinary circumstances, material ,[2]

(vi) the state of the goods that they are damaged ,[3]

(vii) the apprehensions or opinions of foreign correspondents ,[4]

(viii) where a fact is a matter of inference and the materials for drawing it are common to both parties ,[5]

(ix) the general usage of trade to which the insured adventure relates [6]

(x) a general and notorious practice of inserting a certain clause in a particular kind of mercantile contract even tending to increase the risk ,[7]

(xi) where the underwriter waived the disclosure of a particular matter while accepting the risk at a very high premium [8]

10 U S A —The general rule that a representation is material where it would influence the judgment of a prudent insurer in fixing the premium or in determining whether the underwriter would undertake the risk has been applied to marine insurance in U S A

Inquiries made of insured must be truthfully answered and the fact of making inquiries implies that the underwriter considers the matter material to the risk [9] Various representations have been held under the particular circumstances involved to be material such as representation as to the age, equipment, earnings, and particular condition or rating of a vessel or representations as to anything which concerns the state of the vessel at any particular period of her voyage [10] In a voyage policy, a representation as to the situation of the vessel or the time of sailing is material [11]

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1 *Schoolbred* v *Nutt* (1782) 1 Park s Marine Insurance 8th Ed 493 *Haywood* v *Rodgers* (1804) 4 East 590 *Beckwith* v *Sydebotham* (1807) 1 Camp 116

2 *Thames and Mersey Marine Insurance Co Ltd* v *Gunfordship Co Ltd* (1911) A C 529 H L

3 *Boyd* v *Dubois* (1811) 3 Camp 133 doubted in *Carr* v *Montefiore* (1864) 5 B & S 408 423 *See* also *Greenhill* v *Federal Insurance Co Ltd* (1927) 1 K B 65 C A (any unusual circumstance relating to the cargo must be disclosed but not the consequences which naturally follow from the facts which he discloses unless the underwriter inquires as to those consequences) *see* also *Canziere Maccaneco Brindisino* v *Janson* (1912) 2 K B 112 affirmed (1912) 3 K B 452 C A

4 *Bell* v *Bell* (1810) 2 Camp 475 479

5 *Bates* v *Hewitt* (1867) L R 2 Q B 595 605 *per* Cockburn C J *Gandy* v *Adelaide Insurance Co* (1871) L R 6 C B 746 *Canziere Maccaneco Brindisino* v *Janson* (1912) 3 K B 452 C A

6 *Pallance* v *Dewar* (1808) 1 Camp 503 *Ongier* v *Jennings* (1800) 1 Camp 505n *Kingston* v *Knibbs* (1808) 1 Camp 508n *Salvador* v *Hopkins* (1765) 3 Burr 1707 *Freeland* v *Glover* (1806) 7 East 457 *Da Costa* v *Edmunds* (1815) 4 Camp 142 *Stewart* v *Bell* (1821) 5 B & Ald 238

7 *Salvador* v *Hopkins* (1765) 3 Burr 1707 *The Bedouin* (1894) P 1 C A *Aspar & Co* v *Blundell* (1896) 1 Q B 123 C A *Charlesworth* v *Faber* (1900) 5 Com Cas 408

8 *Court* v *Martineau* (1782) 3 Doug K B 161

9 *Bella S S Co* v *Insurance Co of North America* C C A Md 4 F 2d 570 *Kerr* v *Union Marine Insurance Co* 104 U S 635

10 *Miller* v *Russul* 1 S C L 309 *Hathen* v *Public Fire Ins Co* C C A N Y 61 F 2d 962 *Coles* v *Marine Insurance Co* C C Pa 6 F Cas No 2 988 *Hagger* v *American Lloyds* D C Ill 14 F 143 *Bella S S Co* v *Insurance Co of North America supra*

11 *Callaghan* v *Atlantic Insurance Co* 1 Edw 64 *Baxter* v *New England Insurance Co* C C Mass 2 F Cas No 1 127

But statements as to the nature of the cargo and amount, where she was not overloaded were held to be immaterial under the particular circumstances [1] Under certain circumstances, statements as to the value of a vessel have been held material [2] while under other circumstances such statements were held immaterial [3] A representation as to a matter of fact is true if it is substantially, although not literally, correct, and a promissory representation is not falsified if it is substantially complied with [4]

Disclosure by agent effecting insurance

21 Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer—

(*a*) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which, in the ordinary course of business, ought to be known by, or to have been communicated to him, and

(*b*) every material circumstance which the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent

SYNOPSIS

1 *Scope*
2 *Agent effecting insurance, disclosure by him*
3 *Agent acting through intermediate agent or agents*
4 *Broker employed but another broker effecting insurance non disclosure by the latter, effect of*
5 *Lloyds' brokers*

1 Scope—This section enjoins a duty on an agent effecting a contract of marine insurance for the assured to disclose to the insurer every material circumstance known to himself and which the assured is bound to disclose The knowledge of the material circumstance is imputed to the agent which he ought, in the ordinary course of business to know or which ought to have been communicated to him But a material circumstance which comes to the knowledge of the assured too late to be communicated to the agent, the latter has no duty under this section to disclose This section corresponds to section 19 of the English Marine Insurance Act, 1906

2 Agent effecting insurance, disclosure by him—An agent effecting an insurance for the assured, *i e* his principal must disclose all the material circumstances which the assured if he had himself effected the same, should have disclosed The failure of the agent to discharge this duty has the effect of avoiding the contract Non-disclosure of material circumstances by the assured agent is fatal whether it was made with the knowledge and consent of the assured or not [5]

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1 *Bryant* v *Ocean Insurance Co* 22 Pick 200 *Hearn* v *Equitable Safety Insurance Co* C C Mass 11 F Cas No 6 300
2 *Bella S S Co* v *Insurance Co of North America* C C A Md 4 F 21 570
3 *Hodgson* v *Marine Insurance Co Alexandria* D C 5 Cranch 100
4 *Irvin* v *Sea Insurance Co* 22 Wend 380 *St Paul Fire & Marine Ins Co* v *Snare & Friest Co* C C A N Y 269 F 603 cited in Corpus Juris Secundus Vol 45 pp 534 555
5 *Fitzherbert* v *Mather* (1785) 1 Term Rep 12

Where an agent who shipped goods did not telegraph to the principal intimating the loss of goods when he came to learn of it for the fear that this might prevent the principal from insuring the goods and the principal insured them On an action it was held that it was the agent's duty to send a telegram and an insurance effected by the principal after the time when he would have received the telegram was to be avoided on the ground of non-disclosure of material facts [1]

The principle enunciated in *Gladstone* v *King*,[2] and *Strobley* v *Imperial Marine Insurance Co* [3] was that when an agent whose duty it was to keep his principal informed omitted, without any fraud on the agent's part to inform the assured of an occurrence causing an average loss, and thereby the principal was prevented from disclosing the said occurrence, the insurance was not wholly to be avoided but its consequence would be that the underwriter could not be made liable for the average loss But those decisions were disapproved in *Blackburn Law & Co* v *Vigors* [4]

3 **Agent acting through intermediate agent or agents** —Where an agent is employed to effect an insurance but he, instead of effecting same himself, acts through some other intermediate agent or agents and the insurance is effected through the agency of the latter, the non-disclosure of any material fact within the knowledge of the latter will have the effect of vitiating the policy [5]

4 **Broker employed but another broker effecting insurance, non disclosure by the latter, effect of** —Where a broker is employed to effect an insurance on a particular risk but he fails to do so and it is effected by another broker, non disclosure of material circumstance by the latter and the principal unknown to both of them but known to the first broker cannot have the effect of avoiding the policy as the knowledge of the first broker cannot be imputed to the principal [6]

5 **Lloyds' brokers** —Lloyds' brokers are generally the members of Lloyds and contracts of insurance are effected through such brokers They are agents of the assured and not of the underwriters [7] The broker himself is liable for the premium to the underwriters according to the special custom of Lloyds and hence the broker has a lien on the policy in respect of premiums paid and is regarded as an agent of the insurer for the purpose of receiving the premium [8] But the agents appointed by the Corporation of Lloyds are not agents of the under writers [9]

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1 *Proudfoot* v *Montefiori* (1867) L R 2 Q B 511 *see also Blackburn Low & Co* v *Vigors* (1887) 12 App Cas 531 H L *London General Insurance Co* v *General Marine Underwriters Association* (1921) 1 K B 104

2. (1813) 1 M & S 35

3 (1876) 1 Q B D 507

4 (1887) 12 App Cas 531 H L *per* Lord Halsbury L C and Lord Watson

5. *Blackburn* v *Haslam* (1888) 21 Q B D 144 *see also Lynch* v *Dunsford* (1811) 14 East 494 Ex Ch *Thames and Mersey Marine Insurance Co Ltd* v *Gunford Ship & Co Ltd* (1911) A C 529 H L cited *supra*

6 *Blackburn Low & Co* v *Vigors* (1887) 12 App Cas 531 H L *supra*

7 *Empress* v *Boering* (1905) 11 C W Cas 107 *per* Kennedy J ; *see also* A *Hall* v *Bowen* (1928) 32 Ll L R 31, 101 *per* Scrutton L J ; *Hosken* v *Smith* (1951) 84 Ll L R 504 ; *Chisholm* v *State* (1925) 10 Ll L R 604 for an exception

8 *See Mint* v *Forester* (1911) 4 Tom. 541 *Equitable Life* v *Gore* (1911) 12 S L T 357

9 *Hagen* v *Salvage Association Petersburg* (1931) 47 L T

But statements as to the nature of the cargo and amount, where she was not overloaded were held to be immaterial under the particular circumstances[1] Under certain circumstances, statements as to the value of a vessel have been held material[2] while under other circumstances such statements were held immaterial[3] A representation as to a matter of fact is true if it is substantially, although not literally, correct, and a promissory representation is not falsified if it is substantially complied with[4]

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2 Agent effecting insurance disclosure by him—An agent effecting an insurance for the assured, *i e*, his principal, must disclose all the material circumstances which the assured if he had himself effected the same, should have disclosed The failure of the agent to discharge this duty has the effect of avoiding the contract Non disclosure of material circumstances by the assured agent is fatal whether it was made with the knowledge and consent of the assured or not[5]

1 *Bryant v Ocean Insurance Co* 22 Pick 200 *Hearn v Equitable Safety Insurance Co* C C Mass 11 F Cas No 6 300
2 *Ella S S Co v Insurance Co of North America* C C A Mi 4 F 21 573
3 *Hodgson v Marine Insurance Co Alexandria* D C 5 Cranch 100
4 *Irin v Sea Insurance Co* 22 Wend 330 *St Paul Fire & Marine Ins Co v Sears & Frisel Co* C C A N Y 269 F 603 cited in Corpus Juris Secundus Vol 45 pp 554 555
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6 *Blackburn Low & Co* v *Vigors* (1887) 12 App Cas 531 H L *supra*

7 *Empress* v *Bearing* (1905) 11 Com Cas 107 *per* Kennedy J *see* also *Pearson* v. *Rewe* (1928) 32 Ll L R 97 Ll *per* Scrutton L.J *Hagbart* v *Smith* (1) 11 Ll L.R 504 *Gladstone* v *Slade* (1922) 10 Ll L R 604 *for another page*

8 See *Minet* v *Pearson* (1921) 6 *Taylor* 541 *Equitable Life* v *General Accid* at (1904) 12 S L T 24 *for*

9 *Wilson* v *Provincial Insurance Co of St Petersburg* (1) *for* S. L T *for*

Repre entations pending negotiation of contract

22 (1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true If it be untrue the insurer may avoid the contract

(2) A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk

(3) A representation may be either as to a matter of fact, or as to a matter of expectation or belief

(4) A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer

(5) A representation as to a matter of expectation or belief is true if it be made in good faith

(6) A representation may be withdrawn or corrected before the contract is concluded

(7) Whether particular representation be material or not, is, in each case, a question of fact

SYNOPSIS

1 *Scope and object*
2 *Representation, meaning of*
3 *Representation when not true, effect of*
4 *Representation classification of Positive representation*
5 *Misrepresentation*
6 *Misrepresentation, its effect on contract*
7 *Representation as to belief and expectation*
8 *Representation as to information*
9 *Representation to several under writers*
10 *Concealment of a material fact, effect of*
11 *Material representation*
12 *Representation in answer to inquiry*
13 *Question of materiality of a representation, a question of fact*
14 *Representation, its withdrawal or correction*

1 Scope and object —The section speaks of material 'representation' made by the assured or his agent to the insurer during negotiations for contract and before the contract is concluded It enacts that such representation must be true on pain of its being avoided by the insurer if found to be untrue The test of determining the materiality of the representation has been laid as in the case of material circumstance to be prudent insurer's test The section also classifies the representation into two classes *viz*, (i) representation as to a matter of fact and (ii) representation as to a matter of expectation or belief The former will be true when it is substantially correct and the latter when made in good faith The section further provides that a representation before the contract is concluded, can be withdrawn or corrected The section also enacts like the material circumstances that the question whether a particular representation is true or not will, in each case, be a question of fact

The section corresponds to section 20 of the English Marine Insurance Act, 1906 The object of the section is to eliminate any misrepresentation being made the basis of a marine insurance contract It may be noted in this connection that an assured or his agent is not expected to disclose matters that are unknown to him and with due diligence cannot be known to him, but the question whether he is bound to disclose or state immaterial matters, which, if further examined, might lead to the disclosure of material information can only be answered in the light of what an ordinarily prudent insurer would have done under the circumstance However, the assured is not to be penalized for such non disclosure [1]

2 **Representation, meaning of** —The word 'representation' as defined by Arnould, means a verbal or written statement made by the assured to the underwriter, at or before the making of the contract, as to the existence of some fact or state of facts calculated to induce an underwriter more readily to assume the risk, by diminishing the estimate he would otherwise have formed of it [2]

A representation as contemplated under the section is a verbal or written representation made by the assured or his agent during the negotiations for the contract or before the contract is concluded, *i e*, before the acceptance of the proposal of the contract

3 **Representation when not true, effect of** —The section enjoins a duty on the assured or his agent to truly represent all the facts within his knowledge concerning the risk which are material for the underwriter to know and any untrue representation of any such fact gives the underwriter an election to avoid the contract as in the caseof fraud although not accompanied with any fraudulent intention [3] The reason being that contracts of insurance are made upon the basis of representation upon the truth and falsity of which the validity of the contract depends so that a misrepresentation or non disclosure of any material circumstance, however unintentional has the same effect as fraud in vitiating the contract [4]

'Misrepresentation' is a false statement of fact made without any intention to deceive, in breach of duty or otherwise which makes the agreement voidable [5] This means that a contract tainted with misrepresentation remains valid and binding so long as the same is not avoided or repudiated by the party entitled to do so The representations made by the assured or his agent if found to be incorrect or false the underwriter, as soon as he discovers the same, is entitled to repudiate it and if he does not elect to avoid the contract, he may be regarded to have waived his such right

4 **Representation, classification of** —The section classifies representation into two classes, *viz*, (i) a representation as to a matter of fact, *i e*, a positive affirmation based upon knowledge, and (ii) a representation as to a matter of expectation or belief *i e*, a mere declaration of belief or expectation But Arnould adds a third one, *viz*, (iii) a mere communication of information received from others

Positive representation —Positive representation may be divided into two sub classes *viz* (*a*) a firmative, and (*b*) promissory The former relates to an averment of the actual existence of a fact while the latter to a statement

1 *Jones v The Provincial Insurance Co* 3 C. B N S 65
2 Arnould on Marine Insurance 11th Ed p 527
3 *Carter v Boehm* (1766) 3 Bom. 1905.
4 *See Leake Contract*, p 220
5 Sections 17 and 19 Indian Contract Act X of 1872.

that such fact will exist at a future date Some distinction has been made with regard to the effect of representations included in the aforesaid two sub-classes on a contract of insurance It has been said that for the avoidance of the contract, a promissory representation of a material fact must amount to a fraudulent representation while it need not be so in case of an affirmative representation [1] But in subsequent decisions it has been said on the principle of the law of contracts that a representation of a future fact, if it binds at all, will be binding as a contract or promise [2]

But the statutory representation as classified in the section admits of two classes of representations, *viz* a representation as to a matter of fact and representation as to a matter of expectation or belief Under this section a mere non-compliance with a 'promissory representation' will not *per se* avoid the contract but it must be coupled with the further representation that the assured or his agent representing expects or believes that the representation will be fulfilled whence such representation will come within 'a representation as to a matter of expectancy or belief' and when such representation turns to be untrue the insurer may have the ground to avoid the contract [3]

5 **Misrepresentation** —The Indian Contract Act defines 'misrepresentation' to mean and include—

(*i*) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true—(the statement spoken of must be an assertion of fact and not mere inference, it covers a statement as to 'a matter of fact'),

(*ii*) any breach of duty, which, without an intent to deceive, gives an advantage to the person committing it or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him—(this clause illustrates cases of 'constructive fraud' This clause covers both classes of representation contemplated under section 22 of this Act),

(*iii*) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement [4]

Under the section every material representation as to a matter of fact if not substantially correct or every material representation as to a matter of expectation or belief, if not made in good faith will constitute misrepresentation which will be a ground for avoiding the contract of insurance

6 **Misrepresentation, its effect on contract** —It is only when consent to an agreement was caused by fraud or misrepresentation that a person can be said to have a grievance that his consent was not free A party who, at the time of agreement, knows that the other is making false representation or is trying to overreach him and yet enters into the agreement can have no grievance It has been said that deceit which does not deceive is not fraud for however false and dishonest the artifices or contrivances may be by which one man may induce another to contract, they do not constitute a

1 See *Pearson* v *Watson* (1778) 2 Cowp 785 *Dennistoun* v *Lillie* 3 Bli 202 H L

2. See *Jarden* v *Money* (1854) 5 H L Cas 185 *Maddison* v *Alderson* (1883) 8 App Cas 467 H L at p 473 *Citizens Bank of Louisiana* v *First National Bank of New Orleans*, (1873) L R 6 H L 352 360 *Beattie* v *Lord Ebury* (1872) 7 Ch App 777 804

3 *See* the discussion on the topic in Arnould on Marine Insurance 14th Ed Ss 538 549 *see* also Halsbury s Laws of England Simonds Vol 22 3rd Ed, pp 119 120

4 This clause covers misdescription though not fraudulent but material and substantial *e g* an erroneous statement as to the tonnage of a ship (*Oceanic Steam Navigation Co* v *Soondardas* 14 Bom 241)

fraud if that other knows the truth and sees through the artifices or devices *Haud enim decipitur qui scit se decipi* [1]

In an insurance contract, it is not necessary that a representation should be fraudulent in order that it can be avoided, it is enough that a material representation though wholly untainted with fraud for an underwriter to get rid of the contract unless the representation is substantially correct or he knew the truth at the time the contract was made It is not also necessary to avoid the contract on the ground of misrepresentation that the loss should have arisen from a cause in any way connected with the matters represented [2]

7 Representation as to belief and expectation —Sub-section (5) provides that a representation as to a matter of expectation or belief is true, if it be made in good faith But where such a representation is made with the intention to deceive the underwriter, it cannot be said to have been made in good faith and the insurance may, therefore, be avoided [3]

8 Representation as to information —Where a representation is made by the assured upon an information received by him and the underwriter is left to draw his inference therefrom, the underwriter cannot avoid the contract on the ground that information turns to be incorrect [4]

9 Representation to several underwriters —Where there are several underwriters in respect of the same policy, a representation to one of them is representation to all of them Hence, when the representation to the first turns out to be incorrect, subsequent underwriters can avoid the contract on the ground that they subscribed the contract on the faith reposed by them in the skill and judgment of the first [5]

"The true view is that there are two questions of fact to be decided, first whether in any particular case the subsequent underwriter reasonably relied upon the judgment of the first underwriter, and secondly, whether the latter was misled by the representation "[6]

10 Concealment of a material fact, effect of —A concealment of a material fact may tantamount to a representation that the fact does not exist Hence a contract of insurance can be avoided where there is such concealment as every misrepresentation involves a concealment of the truth [7]

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1 *See* Kerr on Fraud and Mistake S 19 Indian Contract Act S of 1872

2. Lynch v Dunsford (1811) 14 East 494 Ex Ch *See* Halsbury's Laws of England Vol 22 Simonds 3rd Ed p 119 Arnould on Marine Insurance 14th Ed Sections 536 555 *see* also the observations of Vaughan Williams L J in *Canture Mecanico Brasileiro v Jamieson* (1912) 3 K B 45 C A at p 466

3 See *Edington* v *Fitzmaurice* (1885) 29 Ch D 459 C A at p 481 *per* Bowen L J *Derry* v *Peek* (1889) 14 App Cas 337 H L *Pearson* v *Watson* (1778) 2 Cowp 785 at p 788 *per* Lord Mansfield C J

4 *Brine* v *Featherstone* (1813) 4 Taunt 869 but see *Fitzherbert* v *Mather* (1785) 1 Term Rep 12 where information received from an agent of the assured, if turns to be incorrect it was held the underwriter might be discharged of his obligation

5 *Pawson* v *Watson* (1778) 2 Cowp 785; *Barker* v *Fletcher*, (1779) 1 Dough K B 305 *Stackpole* v *Simon* (1779) 2 Parks' Marine Insurances (8th Edn) 932 (life policy) *Marsden* v *Reid* (1803) 3 East 572, 573, *Foss* v *Parkinson*, (1812) 4 Taunt 640 the proposition questioned in *Brine* v *Featherstone*, (1813) 4 Taunt 869; *Forester* v *Pigou* (1813) 1 M & S 9; *Bell* v *Carstairs* (1810) 2 Camp 543 cited in Halsbury's Laws of England Vol 22, Simonds 3rd Ed p 120

6 Halsbury's Laws of England, Vol 22, Simonds 3rd Ed pp 120-121

7 *Fitzherbert* v *Mather* (1785) 1 Term Rep 12 *Tate* v *Hyslop* (1885) 15 Q B D 368 C A

In exception to section 19 of the Indian Contract Act X of 1872 it is provi ded that if consent to an agreement was caused by misrepresentation or by silence fraudulent within the meaning of section 17 of that Act, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence [1]

11 Material representation —The test of materiality of a repres nta tion is the same as in the case of disclosure by the assured as laid down in section 20 of the Act, *i e*, a representation will be material which would influence the judgment of a prudent insurer in fixing the premium, or deter mining whether he will take the risk [2]

In this connection the observations of Fletcher Moulton, L J are worth quoting "There is something more than an obligation to treat the insurer honestly and frankly, and freely to tell him what the applicant thinks it is material he should know That duty, no doubt, must be performed but it does not suffice that the applicant should *bona fide* have performed it to the best of his understanding There is the further duty that he should do it to the extent that a reasonable man would have done it, and if he has fallen short of that by reason of his *bona fide* considering the matter not material, whereas the jury, as representing what a reasonable man would think, hold that it was material, he has failed in his duty and the policy is avoided This further duty is analogous to a duty to do an act which you undertake with reasonable care and skill, a failure to do which amounts to negligence, which is not atoned for by any amount of honesty and good intenti n The disclosure must be of all you ought to have realised to be material, not of that only which you did in fact realise to be so [3]

The principle enunciated in *Joel's* case[4] must be read subject to two conditions, namely, there is no duty on the assured to disclose (*i*) what he may reasonably expect of an underwriter to know coming within the purview of the latter s business and the proposed ri k, and (*ii*) where the underwriter waives such disclosure or is indifferent about it [5] But the duty of the assured does not rest only in communicating every fact within his knowledge that is material His duty extends to communicating to the underwriter not only all such facts that may affect the latter's judgment as to whether he will undertake the risk and if so at what premium but also to all rumours and reports which have the effect of enhancing the magnitude of the risk [6]

12 Representation in answer to inquiry —When any representation is made in answer to an inquiry by an underwriter the assured has had notice that his representation will have effect on the judgment of the underwriter on the risk to be undertaken and hence strong presumption exists that the fact enquired was material [7]

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1 See *Mathoo Lal Nayak v Life Insurance Corporation of India* (1967) 32 Com Cas 177 1962 S C 814

2 *See* also P otes under S 20 *infra*

3 *Joel v Law Union and Crown Insurance Co* (1908) 2 K B 863 883 following *Brownlie v Campbell* (1880) 5 App Cas 925

4 *Ibid*

5 *Laing v Union Marine Insurance Co* (1895) 11 T L R 359 ; *see* also *Carter v Boehm* (1766) 3 Burr 1905

6 *Durrell v Bederley* (1816) Holt N P 283 *See* also *Lynch v Hamilton* (1810) 3 Taunt 37 (particular fact known to the under writer at the time of undertaking the risk non-communication of same by the assur ed no defence) but see *Bates v Hewit* (1867) L R 2 Q B 595 (previous knowl edge of the underwriter in respect of a certain fact could not be imputed to him)

7 *The Defence* (1891) 1 1 C A at p 12 ; 10 T L R 70

13 Question of materiality of a representation, a question of fact —The question of materiality of a representation being a question of fact, each case has to be decided upon its particular facts [1]

14 Representation, its withdrawal or correction —Sub section (6) permits withdrawal or correction of a representation made but it must be so done before the contract is concluded and not after the contract is made

When contract is deemed to be concluded

23 A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not, and for the purpose of showing when the proposal was accepted, reference may be made to the slip, covering note, or other customary memorandum of the contract, although it be unstamped

SYNOPSIS

1 *Scope and object*
2 *Proposal and acceptance*
3 *Slip, what is ?*

1 Scope and object —The section enacts that a contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer irrespective of whether any policy in respect thereof was issued or not It also makes unstamped slip, covering note or other customary memorandum of the contract, admissible in evidence to show when such proposal was accepted The object of the section is to give retrospective operation of the contract of marine insurance from the date of acceptance of the proposal although a policy in respect of it was issued at a later date The section corresponds to section 21 of the English Act, 1906 and the law in this regard previous to the said Act was the same [2]

It necessarily follows that the assured after the acceptance of the proposal is not bound to disclose any fresh fact coming to his knowledge after the acceptance of the proposal and before the issuing of the policy [3]

2 Proposal and acceptance —A contract of insurance like any other contract is completed by an offer made by one party to the other and accepted by the latter It is almost a common practice of all insurers except marine, to stipulate that the contract shall not begin to take effect until the premium has been paid In such a case the Court will not enforce a contract until the premium has been paid [4] But the delivery of a policy without exacting the payment of premium raises a presumption that a credit is intended and is a waiver of the condition of prepayment of premium [5]

Where a proposal for insurance is accepted on condition that there will be no assurance till the first premium is paid, there is no contract but a counter offer and the insurer may refuse the premium if there is any material change, in fact constituting the risk [6] Any attempt on the part of an insurer

1 *See* Notes under S 20
2 *Cory v Patton* (1872) L R 7 Q B 304 *see also Lishman v Northern Maritime Insurance Co* (1875) L R 10 C P 179 Ex Ch *Ionides v Pacific Insurance Co* (1871) L R 6 Q B 674 678
3 *Cory v Patton* (1874) L R 9 Q B 577
4 *Ocean Accident & Guarantee Corporation Co Ltd v D F Patkar* 1935 Bom 236
5 *Universal Life Insurance Society In re* 23 Cal 320
6 *Looker v Law Union and Rock Insurance Co Ltd* (1928) 1 K B 554 *South British Insurance Co v Stenson* (1928) 30 Lom L R 745

or assured to vary the terms will constitute a counter proposal or counter offer, as the case may be, and has the effect of destroying the original proposal or offer so that one is not bound to accept as it originally stood but he can accept or withdraw the contract according to his will But if it is clear that the acceptance is intended to be identical with the proposal, the contract is complete notwithstanding some trivial inadvertent variance [1]

3 **Slip, what is ?**—The slip in marine insurance is the complete and final contract whereby the terms of the insurance and the premium are fixed so that neither party can, without the consent of the other, deviate from the terms thereof [2] When an insurer initials a 'slip' brought to him by a broker, it implies that he agrees to issue a policy in terms of the slip But an unstamped slip is not enforceable in law although it is admissible in evidence only for the purpose of showing when the proposal was accepted In a country where there is no stamp law an action on a slip may be maintained [3] A slip may be long slip" or a "short slip" The original slip submitted by the broker to the company s underwriter is often called the "short slip" [4]

THE POLICY

Contract must be embodied in policy

24 A contract of marine insurance shall not be admitted in evidence unless it is embodied in a marine policy in accordance with this Act The policy may be executed and issued either at the time when the contract is concluded, or afterwards

SYNOPSIS

1 *Scope*
2 *Contract of marine insurance*
3 *Marine policy*
4 *Contents of marine policy*
5 *Classes of marine policy*
6 *Policy how to be construed*
7 *"Executed"*

1 **Scope**—This section enacts that all contracts of marine insurance must be embodied in marine policies in accordance with the Act, i e, in accordance with the provisions contained in the sections following viz, section 25 to section 33 It further says that unless the contract is so embodied in the policy the contract must not be admitted in evidence, that is to say, the Court must not admit any document except the policy itself in respect of a contract of marine insurance The section also provides that a policy in respect of a contract of marine insurance may be signed or issued either when the contract is concluded i e on the acceptance of the proposal or subsequent thereto

It therefore follows that a contract of marine insurance embodied in an insurance slip is unenforceable in law [5]

The section corresponds to section 22 of the English Act of 1906

1 *Colonial Insurance Co of New Zealand* v *Adelaide Marine Insurance Co* (1886) 12 A C 128 *see* also *Pearl Life Assurance Co* v *Johnson* (1903) 2 K B 288 *Pacific Insurance Co* (1871) L R 6 Q B 674 684 affirmed (1872) L R 7 Q B 517 Ex Ch *Symington & Co* v *Union Insurance Society of Canton Ltd* (1923) 97 L J K B 616 C A

2 *Bhagwandas* v *Netherlands India Sea and Fire Insurance Co of Batavia* (1888) 14 Ap Cas 83 P C *see* also *Royal Exchange Assurance Corporation* v *Ali Syed-orabrongi Vega* (1902) 2 K B 385 C A

4 *See Re London County Commercial Reinsurance Office Ltd* (1922) 2 Ch 67 *see* also Arnould on Marine Insurance 14th Ed Ss 101 and 105

5 *Fisher* v *Liverpool Marine Insurance Co Ltd* (1874) L R 9 Q B 418

2 **Contract of marine insurance**—A contract of marine insurance is defined in section 3, *ante* [1]

But where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk loss or damage such agreement or engagement shall be deemed to be a contract for sea-insurance [2]

The explanatory definition of a contract for sea-insurance as given in the Stamp Act does not answer the definition of a "policy of sea insurance" or "sea-policy" as defined in section 2 (20) of the said Act and hence such a contract is not chargeable to duty under Article 47A, Schedule I of the Stamp Act unless it amounted to a marine insurance policy within the meaning of this Act Thus, bills of-lading used by the Indian Navigation Companies, usually termed "red" and "blue' bills-of lading whereby for an additional freight the companies insure the shippers against loss, are not chargeable as sea-policies

Contracts of sea-insurance must be distinguished from sea policies Maclean, C J, observed thus 'A contract for sea insurance' is one thing and a policy of sea insurance is another Under Article 47A, the stamp duty is payable only upon a policy of sea-insurance under section 7 [3] But a protection note which substantially satisfies the essential conditions of a "policy of sea insurance" to which the exemption under Article 47 does not apply should be stamped under Article 47A as such a note is not a mere "contract for sea-insurance" [4]

3 **Marine policy**—The derivation of the word "policy" may be traced to the Italian *polizza d assicurazione* (promise of insurance) Policy is an insurance deed because in it the contract of insurance is set forth It may also be called a bond because it is an instrument whereby the insurer obliges himself to pay money to the assured on condition that the obligation shall be void if a specified act is performed or not performed, as the case may be Generally a policy of insurance can be defined as an instrument or a deed by which the insurer in consideration of a premium engages himself to indemnify the assured against loss, damage or liability arising from an unknown or contingent event

The Indian Stamp Act, 1899, defines a marine policy as follows

"Policy of sea-insurance" or "sea policy"—

(*a*) means any insurance made upon any ship or vessel (whether for marine or inland navigation), or upon the machinery, tackle or furniture of any ship or vessel or upon any goods merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of or any other interest which may be lawfully insured in, or relating to, any ship or vessel, and

(*b*) includes any insurance of goods, merchandise or property for any transit which includes not only a sea-risk within the meaning

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1 *See* Notes under S 9

2 See S 2 (20) of the Indian Stamp Act II of 1899

3 *In the matter of Reference under Stamp Act* 30 Cal 565

4 *Tricamji Damji & Co v Hirji Kanji* 24 Bom L R 820 : 67 O C 965 1923 Bom 142

of clause (*a*) but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance [1]

In short, an instrument embodying the contract of marine insurance is called a sea policy or marine policy So where a contract of marine policy is not found expressed in a marine policy, the contract is not a contract at all In *Surajmall Nagore* v *Tritton Insurance Co*,[2] the Privy Council observed thus "The expression of an agreement of a sea-insurance otherwise than in a policy, is a thing forbidden in the public interest and the statutory insistence on a policy is no more collateral requirement or prescription of the proper way of making such an agreement To allow a suit to proceed in defiance of section 7 would defeat the provisions of the law laid down therein "

4 **Contents of marine policy** —See Notes under sections 25, *post* and 28, *post*

5 **Classes of marine policy** —See Notes under sections 27, 29, 30 and 31, *post*

6 **Policy how to be construed** —See Notes under section 32, *post*, second Schedule

7 **"Executed"** —The word "executed" is defined in the Indian Stamp Act, 1899 to mean 'signed "[3] The word "signed" again includes "marked" when the person making the mark is unable to sign his name, it also includes stamped with the name of the person referred to [4]

25 A marine policy must specify—

What policy must specify

(1) the name of the assured, or of some person who effects the insurance on his behalf,

(2) the subject-matter insured and the risk insured against,

(3) the voyage, or period of time, or both, as the case may be, covered by the insurance,

(4) the sum or sums insured,

(5) the name or names of the insurer or insurers

SYNOPSIS

1 *Scope*
2 *Component parts of a policy*
3 *Non compliance with the section, effect of*

1 **Scope** —The section enacts what a marine policy should contain It must contain, amongst others, the name or names of the assured and the insurer, the subject matter insured and the risk insured against, the sum or sums insured and the voyage or period of time or both, as the case may be, covered by the insurance

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1 See S 2 (20) of the Stamp Act 1899
2 52 Cal 408 P C 52 I A 126 : 29 I C 545 1925 P C 83 see also the cases of *Nixon* v *Albion Marine Insurance Co* (1867) 2 Ex 338 *Father* v *Liverpool Marine Insurance Co* (1874) 9 Q B 418 *Insides* v *Pacific Insurance Co* (1871) 6 Q. B. 674 685 *per* Blackburn J *Venus* v *Weekham* (1867) 2 H L. 297 314 *per* Willes J *Bhagwandas* v *Netherlands etc, Insurance Co* (1839) 14 A C 83
3 S 2 (12) Indian Stamp Act 1899
4 S 3 (5) General Clauses Act X of 1897

The section corresponds to sect on 25 of the Eng sh Act of 1906.

2. **Component parts of a policy**.—Since no a is a deed, it generally consists of four parts, viz., (i) recital clause—this clause gives reasons or explanation as to the circumstances under which the deed is executed and its object, (ii) operative clause, it is also known as *testatum* which forms the operative part of the deed and usually commences with the word "Now This lease is to Witnesseth", (iii) provisory clause—this clause defines the liabilities of the parties under certain circumstances set forth in the contract and it commences with the words "Provided always", and (iv) attestation clause, which commences with the words "In witness whereof" and gets an admission of the executant as to the due execution of the deed.[1] In all practical kinds of marine insurance policies, these four clauses are present to specially define the rights and liabilities of the assured and the insurer alike In case of property insurance a Schedule is appended in the policy giving an accurate description of the property insured

3 **Non-compliance with the section, effect of**.—Where a marine policy does not specify the particular risk or adventure, the names of the assured and the insurer, the sum or sums insured, and the voyage or period of time, it becomes invalid in law.[2]

26 (1) A marine policy must be signed by or on behalf of the insurer

Signature of insurer

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured.

SYNOPSIS

1 *Scope* 2. *Subscribing a policy*

1 **Scope**.—The section enacts how a marine policy has to be signed by the insurer or by a person on his behalf and in case of two or more insurers the procedure for signing and its effect

The section corresponds to section 24 of the English Marine Insurance Act, 1906

2 **Subscribing a policy**.—A policy of marine insurance may be subscribed by a single insurer, or two or more insurers or by a company where the insurer is a company incorporated under any Act for the time being In the case of the latter, the seal of the company is sufficient to show that the policy has been subscribed but the form of execution may differ according as the statute, charter, deed or memorandum of association under which the company is constituted or the articles of association by which it is regulated.[3] When the underwriting is made by members of Lloyds', the policies are signed by Lloyds' Policy Signing Office on behalf of numbered syndicates and the seal of the Signing Office is affixed A list of the members of the Syndicates is attached to the policy.[4]

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1 See Form of Policy in the Schedule appended to the Act

2 *English Insurance Co Ltd v Official Receiver of National Benefit Assurance Co Ltd*, (1929) A C 114 H L *Home Marine Insurance Co Ltd v Smith* (1888) 2 Q B 351, C A *Royal Exchange Assurance Corporation v Vaforsakringe Aktiebolaget Vega*, (1902) 2 K B, 384, C A

3 *See Ladd v Allen, Grote v Allen*, (1840) 4 Exch 320 ; *Dowdall v Allen, Dowdall v Clark*, (1849) 1 L J Q, B 41.

4 Halsbury's Laws of England, Vol. 22, Simonds, 3rd Ed , p. 12n (l).

Where the policy is personally subscribed by individual insurers, they sign their names at the foot of the policy, writing opposite thereto the sum assured by each as sub-section (2) provides that each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured and the latter thereby acquires a right of action against each separately and not against all jointly [1]

Voyage and time policies

27 (1) Where the contract is to insure the subject matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject matter for a definite period of time, the policy is called a "time policy" A contract for both voyage and time may be included in the same policy

(2) A time policy which is made for any time exceeding twelve months is invalid

SYNOPSIS

1 *Scope*
2 *Voyage policy*
3 *Time policy*
4 *Voyage-cum time policy*
5 *Time policy exceeding twelve months invalid*

1 Scope—This section speaks of three types of marine policies, *viz*, (i) voyage policy, (ii) time policy, and (iii) voyage-*cum* time policy Other policies are enumerated in sections 29, 30 and 31 *following*

The section corresponds to section 25 of the English Act of 1906

2 Voyage policy—Where the contract is to insure the subject matter "at and from" or "from one place to another or others" the policy is called a "voyage policy"

3 Time policy—Where the contract is to insure the subject matter for a definite period of time, the policy is called a "time policy" under such a policy a ship is insured for a certain period of time, instead of a certain voyage such an insurance is effected in consequence of the ship being intended to be employed in adventures which from their nature it would be inconvenient or even impossible to designate by local termini [2]

4 Voyage *cum*-time policy—Where both the polices, *viz*, voyage and time policies, are inclued in the same instrument, the policy is called "voyage *cum* time policy"

5 Time policy exceeding twelve months invalid—Sub-section (2) enacts that a time policy which is made for any time exceeding twelve months is invalid Sub-section (2) of section 7 of the Indian Stamp Act, 1899, also provides that no sea policy made for time shall be made for any time exceeding twelve months [3]

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1 See *Tyser* v *Shipowners Syndicate (Reassured)*, (1896) 1 Q. B 135 ; *Lee S S Co Ltd* v *Cordrey* (1896) 12 T L. R 395 C A cited in Halsbury Laws of England Vol 22 Simonds 3rd Ed p 12n (1)

2. Arnould on Marine Insurance 14th Ed., sections 101 and 105

3 Sub-section (2) of S 7 of the said Act is repealed by S 92 of this Act because of the provisions made in sub-section (2) of this section.

28 (1) The subject-matter insured must be designated in a marine policy with reasonable certainty

Designation and subject matter

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured

SYNOPSIS

1 *Scope*
2 *Interest, meaning of*
3 *Specification of interest*
4 *Where specific mention should be made*
(i) *Freight*
(ii) *Advance freight*
(iii) *Profits and commissions*
(iv) *Loans on bottomry and respondentia*

1 Scope —The section enacts that in a marine policy the subject-matter insured must be stated with certainty which will be considered reasonable in the circumstances but the nature and extent of the interest of the assured should not be specified in the policy as a matter of course It also enacts how a subject-matter insured and designated in the policy is to be construed The rule enacted is that, when it is designated in general, terms it shall be construed to apply to the interest intended by the assured to be covered and regard should also be given to any usage regulating the designation of the subject-matter insured

2 Interest, meaning of —The word "interest" used in sub-section (3) would be construed to mean the interest of the assured in the adventure insured [1] But sub-section (3) will have no application to a case where the question arises as to out of two voyages which voyage was intended to be re-insured [2]

3 Specification of interest —Sub-section (2) provides that the nature and extent of the interest of the assured in the subject-matter insured need not, as a general rule, be specified in the policy, but sub-section (4) provides that, where there is a usage making it necessary, such interest, its nature and extent, has to be specified Thus, where the contract is of re-insurance, it would be enough to designate the subject matter as being ship or goods, etc, without stating that the contract was one of re-insurance [3] Again, a policy in respect of goods also covers the interest of carriers on goods so that their liability to the owner for loss thereof is protected [4] The term will also

1 *Dunlop Brothers & Co* v *Townend* (1919) 2 K B 127

2 *Janson* v *Poole* (1915) 84 L J K B 1543 at p 1549 *per* Sankey J see also *Reliance Marine Insurance Co* v *Duder* (1913) 1 K B 265 C A

3 *Mackenzie* v *Whitworth* (1875) 1 Ex D 36 C A at p 42 see also *Carruthers* v *Sheddon*, (1815) 6 Taunt 14

4 *Crowley* v *Cohen* (1832) 3 B and Ad 478 cf *Joyce* v *Kennard* (1871) L R 7 Q B 78 *Cunard S S Co* v *Marten* (1903) 2 K B 511 C A

cover successive cargoes on board the same ship in the course of the insured voyage[1], or the homeward bound cargo in whaling voyages[2], or the goods in the nature of merchandise but not the personal effects[3], or money, bullion or jewels if put on board as merchandise but not if not intended for trade[4]. Similarly, a policy on ship will cover the hull, materials and outfit, stores and provisions for the officers and crew, and in case of vessels engaged in special trade, the ordinary fitting requisites for the trade and, in the case of a steamship, the machinery, boilers, coals and engine stores, if owned by the assured[5].

4 **Where specific mention should be made**—(i) *Freight*—It must be specifically mentioned[6], freight will not cover passage money[7], an insurance on "passage money" may be an insurance against disbursements in respect of particular passage money.

(ii) *Advance freight*—Usual course is to insure it specifically as advances on account of or against freight[8].

(iii) *Profits and commissions*—They are to be specifically insured[9].

(iv) *Loans on bottomry and respondentia*—They are to be specifically described in the policy[10], but usage may take them out of their being specifically mentioned[11].

29 (1) A policy may be either valued or unvalued.

Valued policy

(2) A valued policy is a policy which specifies the agreed value of the subject-matter insured.

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial.

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss.

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1 *Hill v Patten* (1807) 8 East 373; *Tobin v Harford* (1863) C B N S 791, 802 affirmed in (1864) 17 C B N S 528, Ex Ch.
2 *Hill v Patten* *supra*.
3 *Duff v Mackintosh* (1852) 3 C B N S 18; *Brown v Stapleton* (1827) 4 Bing 119, 122.
4 *Palmer v Pratt* (1824) 2 Bing 185, 191, 192.
5 *See* Notes under s 18 *supra*.
6 *Griffiths v Brewster-Moore* (1878) 4 Q B D 70; C A; *Williams & Co v Canton Insurance Office Ltd* (1901) A C 462, H L; *See* 18 Shaw Lane *Ltd v London and Provincial Marine and General Insurance Co Ltd* (1912) 3 K B 51; *Pan Atlantic v Hindoostan* (1919) 3 All E R 993, 995, an incipated freight.
7 *Denoon v Home and Colonial Assurance Co* (1872) L R 7 C P 341; *Nea Shipping Co Ltd v Dale* (1914) 2 K B 682.
8 *Hall v Janson* (1855) 4 E and B 500; *Wilson v Martin* (1856) 11 Exch 684; *Williams v North China Insurance Co* (1876) 1 C P D 757; C A, at p 761; *Allison v Bristol Marine Insurance Co* (1876) 1 App Cas 209, H L.
9 *Royal Exchange Assurance v M Seong* (1840) 14 Q B 646, Ex Ch, profits on goods actually shipped; *Lucena v Craufurd* (1806) 2 Bos and P N R 269, H L; *Anderson v Morice* (1875) L R 10 C P 609, Ex Ch; *Mackenzie v Whitworth* (1875) 1 Ex D 36, C A; *Buchanan & Co v Faber* (1899) 4 Com Cas 223, commission on.
10 *Glover v Black* (1763) 3 Burr 1394.
11 *Christie* (1784) 3 Dough K B.

SYNOPSIS

1 *Scope*
2 *Valued policy, definition of*
3 *Valued policy, attributes of*
4 *Some instances, where valuation conclusive*
5 *Opening of valuation*
6 *Valuation not conclusive in constructive total loss*

1 Scope—This section speaks of another two types of policies, *viz*, (1) valued or (11) unvalued Sub-section (2) defines what a valued policy is, while section 30 defines what an unvalued policy is Sub-section (3) enacts that the value fixed by the policy is conclusive as between the insurer and the assured in respect of insurable value of the subject insured irrespective of loss being total or partial The conclusiveness of the value is subject to this that there is no fraud in the matter of valuation Sub-section (4) provides that the value in the policy will not be conclusive when determining a constructive total loss But even in such a case the value may be conclusive if the policy provides to that effect The conclusiveness of the valuation in each case must be subject to the provisions of the Act The section corresponds to section 27 of the English Act of 1906

2 Valued policy, definition of—Sub-section (2) defines a 'valued policy' to be a policy which specifies the agreed value of the subject-matter insured

3 Valued policy, attributes of—The attributes of a valued policy are that except on the ground of fraud, the value fixed by the policy is, as between the insurer and the assured, conclusive of the value of the subject intended to be insured whether the loss is total or partial, but the value fixed by the policy is not, unless the policy otherwise provides, conclusive for determining whether there has been a constructive total loss

Subject to what is stated above, the valuation is binding generally and not merely in cases where the question arises as to the amount payable by insurers in case of loss, the reason being that the valuation constitutes as between the parties to the policy, a conclusive admission as to the value of the subject-matter to which it refers[1] Such a valuation is also binding on the parties in respect of such question as general average, contribution and subrogation[2] The clause providing for payment of a total loss in sterling but containing another clause "claims if any to pay at the rate of $ 4 15 to the £ sterling" held the latter had no application to the total loss but might be applied for expenses incurred in dollars

4 Some instances where valuation conclusive—(1) A valued policy for £ 6,000 was taken in respect of a vessel worth £ 9,000 The vessel was run down and sunk by another vessel The insurer paid the assured £ 6,000 under the policy but recovered from the owner of the offending vessel £ 5,683 '1s 7*d* as damages In such a case the assured

1 *Muirhead* v *Forth and North Sea Steamboat Mutual Insurance Association* (1894) A C 72 H L

2 *Balmoral S S Co* v *Marten* (1902) A C 511 H L *North of England Iron S S Insurance Association* v *Armstrong*, (1870) L R 5 Q B 244 see also *Loders and Nicolins Ltd* v *Bank of New Zealand* (1929) 45 T L R 203 *Howard Houlder & Partners* v *Union Marine Insurance Co Ltd* (1922) 38 T L R 515 H L

is not entitled to any part of the latter amount recovered by the insurer on the ground that the insured value is greater than that named in the policy [1]

(ii) S S 'Balmoral' was valued at £33,000 but her real value for the purposes of contribution was found to be £40,000 and contribution was paid by her owners on the latter figures In an action by the owners against the underwriters, *held*, that the valuation in the policy was binding and the owners were only entitled to recover 33/40 of this contribution [2]

(iii) A ship worth £8,000 was insured by the assured on a valued policy of £6,000 although she was injured to such an extent as beyond any repairs but the fact was unknown to the assured at the time of effecting the insurance The ship was totally destroyed by a storm, the assured is entitled to recover £6,000 as the valuation was binding [3]

5 **Opening of valuation** —Where the whole of the subject intended to be valued was not at risk, the valuation could be opened Thus, where an insurance was made on freight valued at £ 6,500 but while the freight of only 52 bales of cotton was at risk at the time the ship was lost, the assured could not recover the whole of the value given in the policy but only a proportion of that value as the 52 bales would bear to the full cargo intended to be loaded and on the basis of which the freight was calculated Lord Ellenborough has observed thus "The valuation, in the case of goods, looks to all the goods intended to be loaded, and in case of freight, it looks to the freight upon all the goods the ship is intended to carry on the voyage insured, and if, by the perils insured against in a valued policy on goods, part only of the goods intended to be covered be lost, the valuation must be opened and the assured can only recover in respect of that part, and so if, by the perils insured against, the freight or part only of the goods to be carried be lost, the assured can only recover in respect of that loss, according to the proportion which that part bears to the whole sum at which the entire freight was estimated in the valuation "[4] When a question arises as to what was intended to be valued according the valuation clause in the policy would depend upon the intention of the parties which has to be gathered from the words of the clause and the circumstances under which the contract of insurance was made [5]

6 **Valuation not conclusive in constructive total loss** —Sub section (4) provides that a valuation in a valued policy is not conclusive as between the parties thereto where it has to be determined whether there has been a constructive total loss, but where a policy provides for the valuation in case of a constructive total loss, that valuation has to be adhered to Thus, in determining a constructive total loss, the parties have been given the liberty to go behind the valuation [6]

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1 *North of England Iron S S Insurance Association* v *Armstrong* (1870) L R 5 Q B 244

2 *Balmoral S S Co* v *Marten* (1902) A C 511 H L

3 *Barker* v *Janson* (1868) L R 3 C P 303 *Woodside* v *Globe Marine Insurance Co* (1896) 1 Q B 105

4 *Forbes* v *Aspinall* (1811) 13 East 323 104 E R 391 see also *Rickman* v *Carstairs* (1833) 5 B and Ad 651 *Tobin* v *Harford* (1864) 17 C B N S 528 Ex Ch insurance on goods

5 *Williams* v *North China Insurance Co* (1876) 1 C P D 757 C A *Duncan* v *Home and Colonial Assurance Co* (1872) L R 7 C P 341

6 Regarding constructive total loss *see* S 60 and notes thereto as regards partial and total loss *see* Ss 56 and 57 and notes thereto

30 An unvalued policy is a policy which does not specify the value of the subject-matter insured, but subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore explained

Unvalued policy

SYNOPSIS

1 *Scope* 2 *Difference between a valued and an unvalued policy*

1 Scope – This section defines what an unvalued policy is It is also known as an open policy The section enacts that an unvalued policy is one which does not specify the value of the subject-matter, but, subject to the limit of the sum assured, leaves the insurable value to be subsequently ascertained Such value has to be ascertained according to the provisions of section 18 of the Act [1]

The section corresponds to section 28 of the English Act of 1906

2 Difference between a valued and an unvalued policy —The difference in form between a valued and an unvalued policy lies in the fact that, in the case of the former, the blank in the valuation clause is filled up with the sum at which the parties agree to value the subject-matter insured, while in the case of the latter, the valuation clause is left in blank The difference in legal effect between the two policies is that in the case of an unvalued policy, the value of the subject-matter insured is not admitted but has to be subsequently ascertained, whereas in the case of a valued policy, unless it is voidable on the ground of fraud or for some other reason, the value fixed by the policy is, as between the insurer and the assured, conclusive of the value of the subject intended to be insured whether the loss is total or partial [2]

31 (1) A floating policy is a policy which describes the insurance in general terms, and leaves the name or names of the ship or ships and other particulars to be defined by subsequent declaration

Floating policy by ship or ships

(2) The subsequent declaration or declarations may be made by endorsement on the policy, or in other customary manner

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith

1 *See* Notes under S 18 *supra*

2. *See* Halsbury s Laws of England Vol 22 (Simond) 3rd Ed p 13 see also *Tobin* v *Harford* (1864) 16 C B N S. 528 (to make the policy valued the figure should be inserted in the blank space only), *Wilson* v *Nesbon* (1864) 5 B and S 354 in the blank space as under was written and (in the margin the figure £1 300 was put *held* the policy was not a valued policy)

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject matter of that declaration

SYNOPSIS

1 *Scope*
2 *Object of the section*
3 *Applicability*
4 *Floating policy, its characteristics*
5 *Other policies*

1 Scope—The section speaks of still another type of policy known as a floating policy which is defined to be one in which the name of the ship or ships and other particulars are left to be defined by subsequent declaration Sub section (2) prescribes the manner by which the declaration or declarations is or are to be made Sub-section (3) says that, if there is no provision to the contrary in the policy, the declarations have to be made in the order of despatch or shipment and in the case of goods, they must comprise all consignments as mentioned in the policy and their value including other property being honestly stated It also provides for rectification of an omission or erroneous declaration even after loss or arrival when it was made in good faith Sub section (4) provides for treating a policy as an unvalued one when the declaration is not made until after notice of loss or arrival so far as the subject-matter of that declaration is concerned, but the provisions of this sub-clause will not apply where the policy otherwise provides

The section corresponds to section 29 of the English Marine Insurance Act, 1906, and embodies the law laid down in *Robinson* v *Touray*[1], *Herries* v *Kingston*[2], *Gladstones* v *Royal Exchange Assurance*[3], *Stephens* v *Australasian Insurance Co*[4] and overrules the decisions in *Kewley* v *Ryan*[5], *Henchmen* v *Oppley*[6] and the corresponding dicta of Blackburn, J[7] in *Londes* v *Pacific Insurance Co*[7]

2 Object of the section—The object of the section is to overcome the difficulty in many cases where the assured is not in a position to know on what ship or ships the insured goods may be loaded and, in consequence, he effects a floating policy in which the name of the ship or ships and other particulars are left to be defined by subsequent declaration A floating policy is an exception to the general rule which requires that the name of the ship has to be stated in every marine policy at the time the insurance is made This method of insurance by a floating policy was in vogue in very earliest days and came down to be adopted by merchants of modern times with a view not only to protecting particular consignments of goods but also other property which the assured expects to have at risk during a certain time up to a certain amount and within certain stated terms

3 Applicability—Where a policy is stated to be on specified goods "per" a named steamer "and/or steamers" such a policy is not a floating policy within the meaning of this section[8] Similarly, where a policy contained a clause to the effect that declarations of interest were to be made

1 (1811) 3 Camp 158
2 (1811) 3 Camp 160
3 (1964) 5 P and S. 397
4 (1867) L R P C P 28
5 (1754) 2 Ay 1 2 343
6 (1782) 2 Hy Bl 345
7 (1871) L R 6 Q B 674 682
8 *Dickson C Co Ltd* v *Dent* (1916) 2 K L J 2 P 315

as soon as possible after the sailing of the vessel, such a clause was held to be a warranty and provisions in sub-section (5) as to omission and erroneous declaration was inapplicable [1]

4 **Floating policy, its characteristics**—Where a floating policy is effected on goods "on board ship or ships," such a policy covers goods loaded at any port within the limits of the insured voyage [2] But a declaration under such a policy will not make the policy attach where the declaration is made dishonestly as provided in sub-section (3) of the section which makes it obligatory on the assured to make the declaration honestly [3] Similarly, a declaration would be of no avail if the floating policy was not intended to cover the interest of the assured in the property which was the subject of the declaration [4] Conversely, the assured cannot exclude any portion of the interest which the policy was intended to cover from a floating policy for the purpose of declarations [5] Where a floating policy covers shipment of goods made on a given ship within a certain period of time fixed by the policy as declared by the assured, it is also called a floating policy but it has been held that such a floating policy is really an insurance of goods for a series of voyages [6]

5 **Other policies**—The Act specifically mentions of voyage and time policies, section 27, valued policy, section 29, unvalued policy, section 30, and floating policy by ship or ships, section 31, besides there are other kinds of marine policies, such as, (i) vessel policies covering the vessel and equipment, (ii) cargo policies covering goods to be transported, (iii) freight policies, covering either the sum charged for transporting the cargo, the hire paid for a vessel or the increase of the value of goods added by transportation, (iv) named policies describing the name or names of the ship or ships, and (v) fleet policies covering a group of vessels designated by name

32 (1) A policy may be in the form in the Schedule

Construction of terms in policy

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule shall be construed as having the scope and meaning assigned to them in the Schedule

SYNOPSIS

1 *Scope*
2 *General principles of construction*
3 *Policy to be construed as a whole*
4 *Technical words, how to be construed*
5 *Geographical terms, their construction*
6 *Printed or written words*
7 *Surrounding circumstances*
8 *Special rules of construction*
(i) Ejusdem generis *rule*
(ii) *Rule of* ut magis valeat quam pereat
(iii) Contra proferentem *rule*

1 *Union Insurance Society of Canton Ltd* v *George Wills & Co* (1916) 1 A C 281 P C see also *Dunlop Brothers & Co* v *Townend* (1919) 2 K B 127
2 *Hunter* v *Leathley* (1827) 10 B and C 858
3 *Rivaz* v *Gerussi* (1880) 6 Q B D 222 C A
4 *Scott* v *Globe Marine Insurance Co* (1896) 1 Com Cas 370
5 *Dunlop Brothers & Co* v *Townend* 2 K B 127
6 *Johnson & Co Ltd* v [illegible] T L R 368

cope —The section lays down in what form a policy should be drawn and an option has been given in sub section (1) to adopt the form given in the Schedule to the Act and how the terms of the policy are to be construed and in this regard sub-section (2) provides that, subject to the provisions of the Act and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule shall be construed as having the scope and meaning assigned to them in the Schedule Thus the expressions "lost or not lost", "at and from", "from the loading thereof," "safely landed", etc , and the words "from", "pirates," "thieves", "barratry," "stranded", "ship", etc , have to be construed according to the rules laid down in the rules for construction of policy given in the Schedule to the Act

The section corresponds to section 30 of the English Act of 1906

2 General principles of construction —In Halsbury's Laws of England[1] the general principles of construction of marine policies have been stated thus "A contract of marine insurance is to be construed, like all other commercial instruments, so as to give effect to the intention of the parties as expressed in the written contract[2] The most general rule of construction is that the policy is to be construed according to its sense and meaning, as collected in the first place from the terms used in it, and these terms are to be understood in their plain, ordinary and popular sense, unless they have, by the known usage of trade, acquired a peculiar meaning distinct from the popular sense of the same words, or unless the context evidently points out that they must, in the particular instance, and in order to effectuate the immediate intention of the parties, be understood in some other special and peculiar sense[3]

A policy of insurance is to be construed in the first place from the terms used in it which terms are themselves to be understood in their primary,[4] natural, ordinary[5] and popular sense[6] The meaning of a word in a policy is that which an ordinary man of normal intelligence would place upon it[7], or it is to be construed as it is used in the English language by ordinary persons[8]

3 Policy to be construed as a whole —The policy has to be construed as a whole The terms and conditions therein should be literally construed according to their natural and ordinary meaning although the result might be harsh and technical[9] In construing them the ordinary rules of grammar should be observed[10] If possible, effect must be given to every word in the

1 Vol 22 (Simonds) 3rd Ed at p 15
2 *Carr* v *Montefiore* (1864) 5 B and S 408 Ex. Ch. at p. 428 *per* Erle C. J
3 *Robertson* v *French* (1803) 4 East 130 135 *per* Lord Ellenborough C. J applied *Hart* v *Standard Marine Insurance Co* (1889) 22 Q. B D 499 C. A at p 501 *Burrell* v *Dryer* (1884) 9 App Cas 345 H L. *see* also Halsbury's Laws of England Vol 11 pp. 191 208 and 384
4 See *Teagtze Assurance* v *Indemnity Marine* (1908) 2 K. B. 504 529 *per* Farwell L. J
5 See *Glen* v *Lewis* (1853) 8 Ex. 607 618 *per* Park B *West India Telegraph Co* v *Home and Colonial Marine* (1880) 6 Q.B D 51 58 *per* Brett L. J *Thomson* v *Weems* (1884) 9 App Cas 671 687 *per* Lord Watson *Thames and Mersey Marine* v *Hamilton Fraser* (1887) 12 App Cas 484 493 *per* Lord Herschell ; *Leo Steamship Co* v *Cordeiro* (1896) 1 Com Cas 379 385 *per* Lord Esher M R
6 *Drinkwater* v *London Assurance* (1767) 2 Wils 363 *per* Wilmot C J *Curtis & Harvey* v *North British* (1921) A C. 303 311 P C *per* Lord Dunedin *Stanley* v *Western Insurance* (1868) L R 3 Ex. 71
7 Macceride J in *Yorke* v *Yorkshire Insurance* (1918) 1 K. B 662 666
8 Fry L. J in *Hart* v *Standard Marine* (1889) 22 Q B D 499 503
9 *Davison* v *Bonnin* (1922) 2 A C 413 424 *per* Viscount Haldane Lord Fitzgerald in *Cory* v *Burr* (1883) 8 App Cas 393 405.
10 *Jones* v *Universal Marine* (1863) 14 C. B. N S 259 289 *per* Willes J *Price* v *Al Ship's Small Damage Insurance* (1889) 22 Q B D 580 584 *per* Lord Esher M R. *Holmes* v *Payne* (1930) 2 K B. 301 *Anglo International Bank* v *General Accident* (1934) 48 Ll R 151 155 *per* Lord Russell

policy,[1] and a reasonable construction should also be given to every clause therein with a view to give effect to the plain and obvious intention of the parties as collected from the whole document.[2] A clause should not be treated as redundant or as inserted by way of an excess of caution.[3]

4 **Technical words, how to be construed**—Park, J. in *Cliff* v *Schwabe*[4] has summed up the general rule thus "Terms of art, or technical words must be understood in their proper sense unless the context controls or alters their meaning; ancient words may be explained by contemporaneous usage; and words which acquired a particular sense by usage in particular districts, occupations or trades, must be read (the usage being found by the jury) in their acquired sense." But evidence may be adduced to show that any technical word used in a policy has a different and peculiar meaning in the insurance business to which the particular insurance relates and effect should be given to such secondary meaning unless it appears otherwise from the circumstances of the case or the terms of the policy.[5] Thus, where the word "port" has an extensive meaning in a mercantile sense than its legal or political meaning, the former meaning should be given effect to.[6]

5 **Geographical terms, their construction**—Where words descriptive of seas or countries have special meaning among merchants differing from their ordinary meaning of common or geographical import evidence is admissible to prove such special meaning and effect should be given to that meaning.[7] The dictionary in such cases is insufficient evidence.[8] In the undermentioned cases the attempt to prove a special mercantile meaning was unsuccessful.[9]

6 **Printed or written words**—The general rule is that every word in the policy, whether written or printed, should be given effect to as far as possible in spite of the fact that the assured would have rejected the latter had it been present to his mind at the time of contract.[10] But in case of inconsistency, greater weight is given to a written than to a printed clause, the reason being that "the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning, whereas the printed words are a general formula adopted equally to their case and that of all other contracting parties upon similar occasions and subject."[11] It is permissible in construing a document to pay attention to

1 *Yorkshire Insurance* v *Campbell* (1917) A C 218 224 P C *per* Lord Sumner
2 *Borradaile* v *Hunter* (1834) 5 M & G 639 657 *per* Erskine, J
3 See *Curtis* v *Matheus* (1918) 2 K B 825 830 affirmed in (1919) 1 K B 425 *S A Maritime* v *Anglo-Iranian* (1954) 1 W L R 492 (one leans towards treating words as adding something rather than as mere surplusage *per* Somervell L J)
4 (1846) 3 C B 437 469
5 *Mason* v *Skurray* (1780) 1 Park's Marine Insurances 8th Ed 253
6 *Constable* v *Noble* (1810) 2 Taunt 403 *Payne* v *Hutchinson* (1810) 2 Taunt 405 *Hunter* v *Northern Marine Insurance Co* (1888) 13 App Cas 717 731 H L *Sailing Ship Garston Co* v *Hickie* (1885) 15 Q B D 580 C A
7 *Uhde* v *Walters* (1811) 3 Camp 16 *Moxon* v *Atkins* (1812) 3 Camp 290 *Royal Exchange Assurance Corporation* v *Tod* (1892) 8 T L R 669
8 *Houghton* v *Gilbert* (1836) 7 C & P 701
9 *Robertson* v *Clarke* (1824) 1 Bing 445 451 *Northey* v *Trevallion* (1902) 7 Com Cas 201 *Birrell* v *Dryer* (1884) 9 App Cas 345 H L
10 *Pearson* v *Commercial Union Assurance Co* (1876) 1 App Cas 498 H L *Houghton* v *Empire Marine Insurance Co* (1866) L R 1 Exch 206 *Calmar S S Corporation* v *Scott The Portman* (1953) 1 Ll Rep 495
11 Halsbury's Laws of England Vol 22 Simonds 3rd Ed p 16 see also *Robertson* v *French* (1803) 4 East 130 136 *Joyce* v *Realm Marine Insurance Co* (1872) L R 7 Q B 580 583 *per* Blackburn J *Dudgeon* v *Pembroke* (1877) 2 App Cas 284 293 H L *per* Lord Penzance cf *G H Renton & Co Ltd* v *Palmyra Trading Corporation of Panama* (1957) A C 149 169 H L (1956) 3 All E R 957 965 *per* Lord Morton and Glyn v *E & Co* (1893) A C 351 H L Halsbury's Laws of England Simonds 3rd Ed p 415

words struck out [1] Printed words are generally considered as struck out if they are repugnant to the written words or if it clearly appears that the latter was substituted for the former [2] Similarly, a printed clause should not be given effect to if it is inconsistent with the object and purpose of the insurance,[3] suing and labouring clause also containing a written clause excluding liability for salvage charges [4]

7 Surrounding circumstances —In construing a policy regard may be had to the surrounding circumstances, such as the nature of the transaction and the known course of business and the forms in which such matters are carried out but regard may not be given to particular facts that occurred at the inception of the transaction or during the negotiations [5]

8 Special rules of construction —(i) Ejusdem generis *rule*, The general rule of construction that where general words are linked with particular words they should be construed as limited to the same genus as the particular words also apply to policies of insurance [6] Thus, an insurance of a vessel against perils of the seas, men of war, fire, etc, and "all other perils," has been held not to cover the explosion of a donkey boiler [7]

(ii) *Rule of* Ut magis valeat quam pereat —The policy must be construed to make it an effective legal document Where two constructions are possible, the policy must not be given a meaning that will render it a wagering contract [8], or in case of ambiguity, it must be presumed to be made with the person having an interest in the subject-matter [9]

(iii) Contra proferentem *rule* —A policy is construed *contra proferentes*, against those who offer it, in other words, the policy being drafted in language chosen by the insurers must be taken most strongly against them [10] But a clause is only to be construed *contra proferentes* in cases of real ambiguity [11], and the rule must not be applied to create an ambiguity and for its application one must find the ambiguity first [12] Where a clause taken by itself is ambiguous but reading the policy as a whole, its meaning becomes clear, the rule is not applicable [13] Similarly, where a meaning being given to a clause the rest of the policy becomes clear, the policy should be construed

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1 *City and Westminster* v *Mudd* (1959) 1 Ch 129 and *see* also cases cited therein

2 See *G H Renton & Co Ltd* v *Palmyra Trading Corporation of Panama* (1957) A C 149 169 H L (1956) 3 All E R 957 965

3 *Hydarnes Steamship Co* v *Indemnity Mutual Marine Assurance Co* (1895) 1 Q B 500 C A (clause as to commencement of risk) *Western Assurance Co of Toronto* v *Poole* (1903) 1 K B 376

4 *Cunard S S Co* v *Marten* (1903) 2 K B 511 C A (indemnifying the shipowners against liability to owners of cargo for negligence)

5 Lord Sumner in *Yorkshire Insurance* v *Campbell* (1917) A C 218 225 Lord Esher M R in *Hydarnes Steamship Co* v *Indemnity Mutual Marine Assurance Co* (1895) 1 Q B 500 501 *see* also *Gurney* v *Grimmer* (1932) 38 Com Cas 7 C A (history of re-insurance clause considered in construing current form of the clause) *Holder Brothers & Co Ltd* v *Public Works Commissioner* (1908) A C. 276 P C. (demurrage clause in contract of sale) *Bank of New Zealand* v *Simpson* (1908) A C 182 188 (P C)

6 *Muir* v *Railway Passengers Assurance* (1877) 37 L T 356 358 *per* Lord Coleridge C J *See* also *Sun Fire Office* v *Hart* (1899) 14 App Cas 98 (P C) *per* Lord Watson *Bolivia Republic* v *Indemnity Mutual Marine Assurance Co, Ltd* (1909) 1 K B 785 C A

7 *Thames and Mersey Marine* v *Hamilton Fraser* (1887) 12 App Cas 484

8 *Coker* v *Bolton* (1912) 3 K B 315

9 *Sutherland Marine* v *Kearney and Noonan* (1851) 16 Q B 925

10 *Tarleton* v *Staniforth* (1794) 5 T R 695 699 *per* Lord Kenyon

11 *Hare* v *Barstow* (1844) 8 Jur 928 929

12 *Cornish* v *Accident Insurance* (1889) 23 Q B D 453 456 *Cole* v *Accident Insurance* (1889) 5 T L R 736 737 *Alder* v *Moore* (1960) 2 Ll Rep 325

13 *Passmore* v *Vulcan Boiler and General Insurance* (1936) 154 L T 258 259

according to that meaning [1] The rule is not applicable where the assured is responsible for the wording of a part of the policy [2] Ambiguous statements by the assured should be construed against the insurers who accept them without qualification while tricky or misleading statements should be construed against the assured [3]

Premium to be arranged

33 (1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable

The section corresponds to section 31 of the English Act of 1906 and enacts that where an insurance is effected "at premium to be arranged" and no arrangement is made, a reasonable premium is payable Similarly, where an insurance is effected on terms that "an additional premium is to be arranged" in a given event and that event happens and no arrangement is made, a reasonable additional premium is payable

The section may be read with section 54 of the Act

What is a reasonable premium or a reasonable additional premium, is a question of fact

The actual course of marine insurance business is that a broker on receiving orders from his principal to effect an insurance, prepares a 'slip' which contains rough notes sufficient to indicate the terms of the proposed insurance The broker takes the 'slip' round to various underwriters and those who are willing to accept the risk signify their willingness by initialing the slip This slip is, in practice, the complete and final contract fixing the terms of the insurance and the premium and neither party can without the assent of the other deviate from the terms agreed on without a breach of faith The object of the section is to overcome the difficulty where such 'slip' does not specifically state the premium payable under the contract but leaves it to be arranged hereafter and where such is the case, the section says that a reasonable premium is payable The same is the case in connection with an additional premium payable in a given event and that event happens

DOUBLE INSURANCE

Double insurance

34 (1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be overinsured by double insurance

1 *Yorkshire Insurance v Campbell* (1917) A C 218 223 (P C)

2 *Birrell v Dryer* (1884) 9 App Cas 345 354 *see* also the undermentioned cases *Re Etherington and Lancashire and Yorkshire Accident Assurance Co* (1905) 1 K B 591, 596 C A *Stewart v Merchants Marine Insurance Co* (1885) 16 Q B D 619 C A *Ocean A/S v Black Sea and Baltic General Insurance Co*, (1935) 51 Ll Rep 305 C A

3 *Dunn v L P Campbell* (1920) 4 Ll L R 36 39 *Cordegianis v Guardian* (1921) 2 A C. 125

(2) Where the assured is overinsured by double insurance—

(*a*) the assured, unless the policy otherwise provides may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act,

(*b*) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation, for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured,

(*c*) Where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy,

(*d*) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves

SYNOPSIS

1 *Scope and object*
2 *Definition of double insurance*
3 *Assured's claim not to exceed the indemnity*
4 *Assured's right in case of a valued policy*
5 *Assured's right in case of an unvalued policy*
6 *Assured receiving any sum in excess of the indemnity*
7 *Insurances on different interests*
8 *Double insurance in U S A*

1 **Scope and object**—The general rule is that a person is at liberty to take out as many policies as he likes against the same adventure and interest and that he is in no way fettered to claim payment from his insurers in such order as he thinks according to his choice The object of this section is to put a bar to his claiming payment more than the indemnity in the contract But before the assured receives the full amount of his loss, he is entitled to call upon any of his insurers to pay him in full and the fact that others are also liable will afford no defence to another This principle was enunciated in *Godin* v *London Assurance*[1] The principle was applied in earlier Marine decisions,[2] and is enacted in section 32 (2) (*a*) of the English Marine Insurance Act, 1906 and in section 34 (2) (*a*) of this Act and has general application[3] It is also the law in Canada[4]

Sub-section (1) defines what a double insurance means Sub-section (2) prescribes the limitations enumerated in clauses (*a*) to (*d*) thereto to which the claim of the assured should conform Clause (*a*) provides that the

1 (1758) 1 Burr 489
2 *Newby* v *Reed* (1763) 1 Wm Bl 416, *Rogers* v *Davis* (1777) 2 Parks Insurance 8th Ed 601
3 See *North British* v *London Liverpool & Globe* (1877) 5 Ch D 569
4 *Bank of British North America* v *Western* (1884) 7 Ont App 166

assured is not entitled to receive any sum in excess of the indemnity allowed by this Act, clause (*b*) provides the case of a valued policy while clause (*c*) provides for claims under an unvalued policy and clause (*d*) provides for the case where the assured receives any sum in excess of the indemnity allowed by this Act

The section corresponds to section 34 of the English Act of 1906

2 **Definition of double insurance**—Sub-section (1) defines double insurance thus Where two or more policies are effected by or on behalf of the assured on the same adventure and interest, or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be overinsured by double insurance The requisites of a double insurance, then, are (*i*) there must be two or more policies, (*ii*) the policies must be effected by the same assured, (*iii*) the policies must relate to the same adventure and interest or any part thereof, and (*iv*) the sums insured must exceed the indemnity allowed by this Act (As to the indemnity allowed, *see* section 29 for valued policy and section 30 for unvalued policy)

3 **Assured's claim not to exceed the indemnity**—Clause (*a*) of sub-section (2) provides that where the assured is overinsured by double insurance, the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by the Act This provision embodies the law as laid down in *Newby* v *Reed*,[1] and *Rogers* v *Davis*[2] Thus, if a merchant, the value of whose whole interest is £ 3,000, first effects a policy on this interest at Liverpool for £ 2,000, and then another policy on the same interest at London for £ 3,000, he can recover the whole amount of £ 3,000 on the London policy or he can recover the whole amount of £ 2,000 on the Liverpool policy and £ 1,000 on the London policy but he cannot recover £ 2,000 on the Liverpool policy and £ 3,000 on the London policy as by that he would be recovering more than the indemnity allowed by the Act

4 **Assured's right in case of a valued policy**—Clause (*b*) of sub-section (2) provides that where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject matter insured Thus when property is valued at £ 9,000 and insured for £ 2,000 with *A*, and valued at £ 8,000 and insured for £ 8,000 with *B*, if the assured claims £ 2,000 first from *A*, he will be entitled to no more than £ 6,000, the balance of £ 8,000 from *B*, but if he claims £ 8,000 from *B* first, he will be entitled to £ 1,000, the balance of £ 9,000 from *A*[3]

5 **Assured's right in case of an unvalued policy**—Clause (*c*) of sub-section (2) also says that where the policy under which the assured claims is an unvalued policy, the assured must give credit as against the full insurable value for any sum received by him under any other policy The provisions in clauses (*b*) and (*c*) embody the law as laid down in *Bruce* v *Jones*[4] which virtually overruled *Bonsfield* v *Barnes*[5]

The result is that the amount recoverable may sometimes depend on the order in which actions on different policies are instituted Thus, if

1 (1763) 1 Wm Bl 416
2 (1777) 2 Parks Marine Insurance, 8th Ed, 601
3 See *Bruce* v *Jones* (1863) 1 H
4 (1863) 1 H & C. 769
5 (1815) 4 Camp 228

ship is insured by policy *A* for £2,000 valued at £4,000, and by policy *B* for £2,000 valued at £3,000, and there is a total loss, the assured can recover £2,000 on policy *B*, and then claim £2,000 on policy *A* If he first receives from the underwriters on policy *A* £2,000, the sum insured by that policy, he can only claim on policy *B* the difference between £ 2,000 and the amount of the valuation £3,000, that is, £ 1000 [1]

6 **Assured receiving any sum in excess of the indemnity**—Clause (*d*) of sub section (2) further provides that where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves [2]

7 **Insurances on different interests**—Although one assured cannot, by double insurance, recover more than the amount of his loss, a number of persons, interested in the same subject-matter, may take out insurances of their separate interests and recover, in all, a sum exceeding the value of that subject matter [3] In such a case the principle of subrogation applies and limits the amount ultimately paid by all the insurers to the indemnity allowed by the Act [4]

8 **Double insurance in U S A**—'Double insurance' in Marine insurance in U S A, has been defined as two insurances on the same interest at the same time and against the same risks If the person insured or the risks, interests or property are different, it is not a case of double insurance In the absence of a contrary stipulation in the policy, insured may recover the whole amount of any loss from any of the insurers up to the amount of the policy or he can recover proportionately from the general insurers Under the so-called American clause, in general, underwriters become liable according to the dates of their policies and a second or subsequent underwriter is not liable with respect to that part of the insured interest or value which is fully covered by prior insurance [5]

WARRANTIES, ETC

35 (1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts

Nature of warranty

(2) A warranty may be express or implied

(3) A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date

1 *See* Halsbury's Laws of England Vol 22 (Simonds) 3rd Ed p 165

2 For right of contribution *see* S 80 *infra*

3 *Westminster Fire Office v Glasgow Provident* (1888) 13 App Cas 699

4 *See* S 79 *infra* and *see* also *North British and Mercantile Insurance Co v London Liverpool and Globe Insurance Co* (1877) 5 Ch D 569 C A *Godin v London Assurance* (1758) 1 Burr 489 455

5 Corpus Juris Secundus Vol 45 pp 1158 to 1159 and *see* the cases cited therein.

SYNOPSIS

1 *Scope*
2 *Definition of warranty*
3 *Meaning of "warranty" in insurance law*
4 *Representations and warranties—Difference*
5 *Two kinds of warranties*
6 *Promissory warranties, meaning of*
7 *Warranty must be exactly complied with*
8 *Materiality irrelevant*

1 Scope—The section speaks of nature of warranty Sub-section (1) defines what the word "warranty" in marine insurance means Sub section (2 speaks of two kinds of warranties, *viz*, express or implied warranty Sub section (3) says that a warranty as defined in sub-section (1), whether material or not to the risk, must be complied with and its breach will have the effect of discharging the insurer from liability as from the date of its breach but any liability already incurred by the insurer before that date is excepted

The section corresponds to Sec 33 of the English Act of 1906

2 Definition of warranty—Sub-section (1) defines a warranty to mean a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts Thus, according to this definition warranty arises (i) where the assured undertakes that some particular thing shall or shall not be done, or (ii) where he undertakes that some condition shall be fulfilled or (iii) where he affirms or negatives the existence of a particular state of facts

3 Meaning of "warranty" in insurance law—Ordinarily, a warranty is defined as an "express or implied statement of something which the party undertakes shall be part of a contract and though part of a contract yet collateral to the express object of it"[1] But in a contract of insurance, the term 'warranty' is usually employed in the sense of a condition of the contract The word 'warranty' is used when what is really meant is a pure condition[2] Sterling, L J, has observed that the term 'warranty' is frequently used in the sense that it imports a condition of liability[3] In other commercial transactions a breach of warranty usually gives rise to claim for damages but in insurance law a breach of warranty entitles the party aggrieved to repudiate his liability under the rest of the contract[4] As used in this section, a warranty is expressed to be a promissory warranty and a condition

4 Representations and warranties—Difference—The difference between representations and warranties has been stated thus "If a person effecting a policy of insurance says 'I warrant such and such things which are here stated' and that is part of the contract, then whether they are material or not is quite unimportant, the party must adhere to his warranty, whether material or immaterial But if the party makes no warranty at all but simply makes a certain statement if that statement has been made *bona fide* unless it is immaterial, it does not signify whether it is false or not false Indeed, whether made *bona fide* or not, if it is not material, the untruth is

1 Leake on Contract p 282
2 *Dawsons Ltd v Bonin* (1922) 2 A C 413 423 *per* Viscount Haldane
3 *Ellinger & Co v United Life Insurers Co of New York* (1905) 1 K B 31 at pp 37 38
4 See *Bennett v Fehr* (1853) 1 Q B 340 *Peleterie v Gregory* (1926) A C 90

quite unimportant If there is no fraud in a representation, it is perfectly clear that it cannot affect the contract, and even if material but there is no fraud in it and it forms no part of the contract, it cannot vitiate the right of the party to recover "[1]

The difference in form between the two is that "representations" may be made either verbally or in writing and need not be introduced into the policy, whereas 'warranties" must always be in writing and must always be inserted in the policy [2]

5 **Two kinds of warranties**—Sub-section (2) enacts that there are two kinds of warranties, *viz*, express or implied Express warranties have been specifically dealt with in section 37, while sections 39 and 42 deal with cases where no warranty should be implied, and section 43 deals with implied warranty

A warranty is implied if it is a condition implied by law, such as, for instance, a warranty in a voyage policy that the ship is seaworthy at the commencement of the voyage, or that she will not deviate from the prescribed or usual course of the voyage, but in other branches of insurance law, such as in a fire or life policy, there is no implied warranty [3] In insurance law warranties are divided into two classes, *viz*, (i) warranties relating to a fact or state of affairs warranted to exist at the time of the contract, and (ii) warranties as to future facts or states of affairs Some instances of warranties as to future may be given thus (i) "State full address at which vehicles will be usually garaged—Above address"[4], (ii) "Are any explosives used in your business?—No"[5] Some instances of warranties as to present only may also be given thus (i) "How often is *X* required to send statements of cash received?—Daily"[6], (ii) "Is your machinery properly fenced?—Yes"[7]

6 **Promissory warranties, meaning of**—Warranties relating to the future are sometimes described as "promissory" warranties [8] But all warranties under the Act are promissory warranties and they relate both to the future and the present state of facts and affairs A distinction has, however, been sought to be made with regard to warranties which merely define the risk insured against as such a class of warranty can only relate to the future" Such warranties, *e g* where a policy is "warranted free of capture" by an F C and S clause, are not warranties in the sense in which the word is used in this section but are simply excepted perils, breach of them does not entitle the insurer to repudiate all liability under the policy Thus, where a vessel "warranted free of capture" is captured the underwriters will not be responsible for that loss, but they will be liable for a subsequent loss by a peril of the sea, provided the capture was not the proximate cause of it [9]

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1 *Anderson* v *Fitzgerald* (1853) 4 H L C 484 at p 504 *See* also *Pawson* v *Watson* (1778) 2 Cowp 785 787 *per* Lord Mansfield C J *Von Tungelin* v *Dubois* (1809) 2 Camp 151 *Nonnen* v *Reid Nonnen* v *Kettlewell* (1812) 16 East 176 186

2 *See* also Notes under S 22 *supra*

3 See *Shaw* v *Robberds* (1837) 6 A & E 75 *Pritchard* v *Merchants Life* (1858) 3 C B N S 622.

4 *Dawsons* v *Bonin* (1922) 2 A C. 413 (motor Insurance)

5 *Beauchamp* v *National Mutual* (1937) 3 All E R 19 (accident liability)

6 *Hearts of Oak* v *Law Union* (1936) 2 All E R 619 (fidelity insurance)

7 *Woolfall & Rimmer* v *Moyle* (1941) 3 All F R 304 (employers liability insurance), *see* also *Sweeny* v *Kennedy* (1949) 82 Ll L R 295 (Are any of your drivers under 21 ?—No

8 *See* Goddard J in *Hearts of Oak* v *Law Union* (1936) 2 All E R 619 623 ; Finlay J in *Beauchamp* v *Mutual* (1937) 3 All E R. 19 21

9 See Scrutton L J in *Morgan* v *Provincial* (1932) 2 K B 70 80

10 *Anderson* v *Morice* (1876) A C. 334

But where a vessel was "warranted on St Lawrence between October 1 and April 1", it was held that the warranty was a "promissory" one, breach of which relieved the underwriters from liability for a subsequent loss [1]

It is a difficult question of construction to determine whether a given warranty does or does not relate to the future In any case it cannot be said that the mere expression of an intention is a promise as to the future Thus, where a vessel was insured and was described by the assured as "now lying in the T dock and intended to navigate the St Lawrence as a freight boat and to be laid up for the winter in a place approved by this company" and the vessel was destroyed eleven months afterwards by fire but had remained in dock the whole time, it was held by the Privy Council that the words were not a warranty as to the ship's future movements, but merely expressed an intention that the vessel should navigate as mentioned [2]

7 Warranty must be exactly complied with —Sub-section (3) enjoins that a warranty as defined in sub-section (1), is a condition which must be exactly complied with and its failure to so comply with will entitle the insurer to be discharged from liability as from the date of its breach [3] It is of no consequence if the breach occurred without the fault,[4] or even the knowledge,[5] of the assured, or owing to someone else's fault,[6] or that the risk is not increased by its breach [7] Even it does not matter if the loss is totally unconnected with it, and would have happened in any event [8]

8 Materiality irrelevant —Sub-section (3) further provides that a breach of warranty entitles the insurer to repudiate his liability irrespective of whether a warranty is material or not This is one of the cardinal principles of insurance law [9]

Except as provided in section 36 where breach of warranty has been excused in the circumstances mentioned therein, the warranty is an absolute condition precedent [10]

36 (1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or, when, compliance with the warranty is rendered unlawful by any subsequent law

When breach of warranty excused

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1 *Burrell* v *Dryer* (1884) 9 App Cas 345

2 *Grant* v *Aetna Insurance* (1862) 15 Moo P C 516, 15 F R 589 P C

3 See *De Hahn* v *Hartley* (1786) 1 T R 343 345-346 per Lord Mansfield

4 *Philips* v *Baillief* (1784) 3 Dough (H B) 374

5 *Trickett* v *Queensland Insurance* (1936) A C. 159 166

6. *Worsley* v *Wood* (1796) 6 T R 710

7 *New Castle Fire* v *Macmorran* (1815) 3 Daw 255

8 *Maynard* v *Rhode* (1824) 1 C. & P 360, *Glen* v *Lewis* (1853) 8 Ex. 607, *Foley* v *Tabor* (1861) 2 F & F 663 *Beacon Life* v *Gibb* (1862) 1 Moo P C C (N.S.) 73

9 *Pawson* v *Watson* (1778) 2 Cowp 785 per Lord Mansfield *Newcastle Fire* v *Macmorran* (1815) 3 Dow H L 255, per Eldon L C *Arnould* v *Revell*, (1853) 4 H L C 433, *Haywood* v *Rodgers* (1803) 4 East 590, *Blackburn* v *Haslegrave* and *General* (1922) A C 13 *Dunrobin* v *Nicholl* (1826) 2 App Cas 166 *Bowes* v *Shand* (1877) 2 App Cas 455, *Bamfield* v *Goole* (1827) 3 Bing 422

10 *Hore* v *Whitmore*, (1778) 2 Cowp *Hordern* v *Dixon*, (1822) 5 Bar *Thompson* v *Hopper*, (1856) 6 E &

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss

(3) A breach of warranty may be waived by the insurer

SYNOPSIS

1 *Scope*
2 *Cases where non-compliance with warranty excused*
3 *Breach remedied or warranty complied with before loss, no defence*
4 *Waiver of breach of warranty by insurer*

1 Scope—The section provides for certain cases where non-compliance with a warranty can be excused The cases contemplated under this section are (*i*) when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or (*ii*) when, compliance with the warranty is rendered unlawful by any subsequent law A third case is contemplated in sub section (3), namely, where a breach of warranty is waived by the insurer But sub section (2) reiterates the principle that a defence that the breach has been remedied or the warranty is complied with before loss will not be available to the assured when once a warranty is broken

The section corresponds to section 34 of the English Act of 1906

2 Cases where non-compliance with warranty excused—Non compliance with a warranty is excused (*i*) if the state of things contemplated by the warranty ceases, thus if, during a war, a warranty to sail with convoy at a given future time be inserted in the policy, the intervention of peace before that period would excuse the necessity of compliance on the principle that *cessante ratione cessat lex*, and (*ii*) when the compliance with the warranty is rendered unlawful by any subsequent law [1]

3 Breach remedied or warranty complied with before loss, no defence—It has already been noticed in section 35 *supra* that on non compliance with a warranty the insurer is discharged from liability as from the date of its breach Sub-section (2) of this section enacts that the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss [2] Thus, a breach of warranty of sea worthiness will discharge the underwriter from liability as from the time of such breach, although the loss is wholly unconnected therewith, and even though the unseaworthiness was remedied before the loss [3]

4 Waiver of breach of warranty by insurer—Sub-section (3) provides that a breach of warranty may be waived by the insurer Where the party aggrieved by a breach of condition elects to carry on with the contract, he is often said to have 'waived" the breach of condition [4]

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1 Halsbury's Laws of England Vol 22 Stevens 3rd Edn pp 21 22 citing Arnould on Marine Insurance 14th Edn S 636

2 *Hibbert* v *Pigon* (1783) 3 Dough (K B) 224

3 *Quebec Marine Insurance Co* v *Commercial Bank of Canada* (1870) L R 3 P C 234 following *Bershaw* v *Chabert* (1821) 3 Brod & Bing 158

4 See *Lee* v *Employers Mutual* (1936) 1 K B 505 514 *per* Green L J *Amp* v *British Legal* (1918) 1 K B 136 140 *per* Lawrence J but the use of the word waiver in this sense criticised see *Hepburn Pashe* v *Dawsons Bank* (1935) 51 Ll L R 147 150 P C *per* Lord Russell of Killowen *Atlantic Shipping Co* v *Louis Dreyfus* (1922) A C 250 261-62 *per* Lord Sumner (*Craft* v *Lemley* (18..) 6 H L C 672 705, *per* Brameell, B.

Where the insurers accepted abandonment to them of the vessel lost, they are estopped from setting up the breach of a warranty, of which they were already aware, in answer to a claim [1]

Waiver is effected either by a memorandum or note on the policy to the effect that "the seaworthiness of the vessel as between the assured and the underwriter is hereby admitted" or by an act of the underwriter, such as acceptance of notice of abandonment, affirming the policy after knowledge of the breach of warranty [2]

Express warranties.

37 (1) An express warranty may be in any form of words from which the intention to warrant is to be inferred

(2) An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy

(3) An express warranty does not exclude implied warranty, unless it be inconsistent therewith.

SYNOPSIS

1 *Scope*
2 *Form of express warranty*
3 *Incorporation of warranty*
4 *An express warranty does not exclude an implied warranty*
5 *Warranties, some instances of*

1 Scope—The section speaks of an express warranty, what its form should be, how it is to be incorporated in the policy or in other document and whether it excludes implied warranty In speaking of its form sub-section (1) lays down that it may be in any form of words but the only criterion must be that from those words the intention to warrant can be inferred In dealing with its incorporation in the policy or other document sub-section (2) provides that an express warranty must be (i) included in or written upon the policy, or (ii) must be contained in some document incorporated by reference into the policy In enacting whether an express warranty excludes implied warranty sub-section (3) says that unless there is anything inconsistent in meaning an express warranty does not exclude implied warranty

The section corresponds to section 35 of the English Act of 1906

2 Form of express warranty—No particular form is necessary to constitute an express warranty It is enough if from the words used in any form the intention to warrant can be inferred Thus, the word "warranty" or "warranted" is not at all necessary to constitute an express warranty The words, such as, "to sail on such a day", or "in port", or "all well" on such a day, when written upon the policy would constitute an express warranty within the meaning of this section Thus, where the policy contained a clause to the effect that declarations of interest were to be made as soon as possible after the sailing of the vessel, the clause was a warranty and failure to comply with it precluded the assured to recover the loss [3] Even

1 *Provincial Insurance v Leduc*, (1874) L. R. 6 P C. 224

2. *Ware v Aberdein* (1819) 2 B. & Ald 320 as explained in *Quebec Marine Insurance Co v Commercial Bank of Canada* (1870) L. R. 9 P C. 234, *Provincial Insurance v Leduc* (1874) L. R 6 P C. 224

3 *Union Insurance Society of Canton Ltd v George Wills & Co* (1916) 1 A C. 281 (P C.) see also *Dunlop Brothers & Co v Townend*, (1919) 2 K. B. 127

the description of the vessel insured as being of a certain nation would amount to an express warranty of her nationality[1] But there cannot be any implied warranty against change of nationality[2] It should also be noted that no strained construction should be put on a statement so as to make it a warranty[3] Thus in a time policy where a vessel was called the "good ship *A*" it was not a warranty of seaworthiness[4]

3 Incorporation of warranty —Sub-section (2) provides that nothing can be an express warranty unless it is included in or written upon the policy or is contained in some document incorporated therein by reference The warranty may be incorporated in the policy either in its margin or at the foot or transversely and there is no hard and fast rule as to how it should be incorporated in the policy[5] Even statements in a proposal form were held to be incorporated in the policy and to amount to a warranty[6]

4 An express warranty does not exclude an implied warranty — Sub section (3) provides that an express warranty does not exclude an implied warranty unless inconsistent therewith Thus if a policy provides that the fittings of a ship are to be approved by a surveyor and they are so approved by him it does not exclude the warranty of seaworthiness on account of the express provision for the approval of fittings[7]

5 Warranties, some instances of —(i) Where a marine policy on a ship contained a warranty that the amount insured on p p i terms should not exceed a certain figure, it was held that the word "insured" included insurance against war risks[8]

(ii) Where a ship is warranted "well" or "in good safety" on a particular day, it means it must be safe at any time during that day[9]

(iii) Where a ship is warranted to sail before or after a given day, it must sail before or after that day, the underwriter is discharged from liability if it does not sail before or after the prescribed day, although the loss is not in the remotest degree connected with the time of her sailing[10]

(iv) Where a ship is warranted to be in port at a given day she must be in the port on that day[11]

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1 *Kenyon v Berthon* (1778) 1 Dough K B 12n *Barring v Clagett* (1802) 3 Bos & P 201; *Lethian v Henderson* (1803) 3 Pos & P 499 H L *Baring v Christie* (1804) 5 East 398

2. *Dent v Smith* (1869) L R 4 Q B 414

3 *Muller v Thompson* (1811) 2 Camp 610

4 *Small v Gibson* (1849) 16 Q B 141 Ex Ch affirmed *sub nom Gibson v Small* (1853) 4 H L C 353

5 See *Blackhurst v Cockell* (1789) 3 Term Rep 360, *Pattison v Barnardi* (1778) 1 Dough K B 12 *see* also *Bensaude v Thames and Mersey Marine Insurance Co* (1897) A C 609 H L *per* Lord Halsbury

6 *Yorkshire Insurance Co Ltd v Campbell* (1917) A C 218 P C; *see* also *Edwards v Aberayron Mutual Ship Insurance Society* (1876) 1 Q B D 563 Ex Ch at pp 586 588 where Pollock B and Brett J expressed the view that parol evidence is admissible to show what documents were intended by the parties to form one contract of insurance

7 *Sleigh v Tyser* (1900) 2 Q B 333 *Quebec Marine Insurance Co v Commercial Bank of Canada* (1870) L R 3 P C 234 *Greenock S S Co v Maritime Insurance Co Ltd* (1903) 1 K B 367 affirmed (1903) 2 K B 657 C A

8 *P Samuel & Co Ltd v Dumas* (1924) A C 431 H L.

9 *Blackhurst v Cockell* (1789) 3 Term Rep 360

10 *Lenan v Grant* (1779) Marshall on Marine Insurances 4th Ed 284 *Tenyon v Berthon* (1778) 1 Dough K B 12 n *Gist v Mitchell* (1810) 2 Taunt 301

11 See *Hunter v Northern Marine Insurance Co* (1888) 13 App Cas 717 H L as to when a ship is in port *Agrimpex Hungarian Trading Co etc v Sociedad Financiera de Bienes Raices S A* (1957) 3 All E R 626 as to meaning of port in relation to an arrived ship

But when a ship is insured "in any lawful trade" these words must be confined to the trade on which the ship is sent by her owners, and therefore the assured who has sent her on a lawful voyage is not precluded from recovering a loss occasioned by her being barratrously employed in a smuggling trade [1]

Warranty of neutrality

38 (1) Where insurable property, whether ship or goods, is expressly warranted neutral, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk

(2) Where a ship is expressly warranted "neutral", there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers If any loss occurs through breach of this condition, the insurer may avoid the contract

SYNOPSIS

1 *Scope*
2 *Warranty of neutrality, meaning of*
3 *Insurer's liability under a warranty of neutrality*
4 *Documents to establish neutrality*

1 Scope —This section is an illustration of the principle enacted in sub-section (3) of section 37, that an express warranty does not exclude an implied warranty The section enacts that where insurable property is expressly warranted "neutral" an implied warranty is also attached to it that it must have its neutral character not only at the commencement of the risk but such character must also be preserved, as far as practicable, during the continuance of the said risk In the case of a ship, where she is expressly warranted 'neutral' an implied warranty is also attached that she shall be properly documented, that is, she must carry the necessary papers to establish her neutrality, she must not falsify or suppress her papers or use simulated papers The insurer has been given the option to avoid the contract on breach of such implied warranties

The section corresponds to section 36 of the English Act of 1906

2 Warranty of neutrality, meaning of —Where in time of war the assured warrants the ship or goods to be neutral, such a warranty is called "a warranty of neutrality" The warranty of neutrality does not mean that there will be no future war [2] Since the time of Napoleonic wars it became the practice with the underwriters to require the assured to warrant the neutrality of the insurable property, such as ship or goods The object of inserting such warranty is to avoid the risk of capture The warranty of neutrality must satisfy the two statutory conditions laid down in sub-sections (1) and (2) of this section

1 *Havelock* v *Horrell* (1789) 3 Term Rep 271
2 *Eden* v *Parkinson* (1781) *Tyson* v *Gurney* (1769) 100

day, if it was, he should be made liable and if not, his liability ceases But if it was not "well" or "in good safety" beyond the given day the insurer cannot absolve himself from his liability under the policy [1]

Warranty of seaworthiness of ship

41 (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness

SYNOPSIS

1 *Scope*
2 *Seaworthiness, meaning of*
3 *Manner in which ship to be seaworthy*
4 *Stages in the voyage and warranty of seaworthiness*
5 *Seaworthiness in a time policy*
6 *Burden of proof*
7 *Seaworthiness, whether a continuing warranty*
8 *U S A*

1 Scope—The section speaks of warranty of seaworthiness of a ship in respect of a voyage policy as well as of a time policy A warranty of seaworthiness is an implied warranty except in the case of a time policy Such a warranty relates, in case of a voyage policy to that (i) the ship at the commencement of the risk, must be reasonably fit to encounter the ordinary perils of the seas of the adventure insured, (ii) she must, while in port, be reasonably fit to encounter the ordinary perils of the port, and (iii) she must, in case where a voyage is performed in different stages, be seaworthy in

1 See *Monkhurst* v *Cockell*, [1789] 3 Term Rep 360, see also notes under sect on 37 *infra*

3 **Insurer's liability under a warranty of neutrality**—The insurer has the right to avoid the contract where contrary to warranty the property has not a neutral character at the commencement of the risk[1], but in case of the property losing its neutral character after the commencement of the risk, the insurer's liability depends upon the question whether that could have been prevented by the assured or his agents Thus, the insurer's liability will continue if after the date of the insurance a war breaks out which makes the property as enemy property[2]

4 **Documents to establish neutrality**—Sub-section (2) provides for a case where a ship is expressly warranted "neutral" In such a case the ship must be properly documented, that is, she must carry the necessary papers to establish her neutrality The sub-section enjoins both positive and negative duties The duty to carry necessary papers is a positive duty while the duty not to falsify or suppress papers or use simulated papers is a negative duty The provisions of this sub-section will be observed as far as the assured can control the matter

Proper documents are those required by the general law of nations or by treaty, and do not include those which are only required by the Ordinance of the belligerent power[3] Lack of proper documentation will discharge an underwriter from his liability when condemnation of ship arose only on that ground[4]

No implied warranty of nationality

39. There is no implied warranty as to the nationality of a ship, or that her nationality shall not be changed during the risk

Although there can be express warranty of neutrality in respect of insurable property and implied warranties thereto that the property must have neutral character at the commencement of the risk but this section enacts that there is no implied warranty as to the nationality of a ship or that her nationality shall not be changed during the risk

This section corresponds to section 37 of the English Act of 1906[5]

Warranty of good safety

40 Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day

This section corresponds to section 38 of the English Marine Insurance Act, 1906 It enacts what a warranty of good safety should be, that is to say where the subject-matter insured is warranted "well" or "in good safety' on a particular day, it is sufficient if it be safe at any time during that day but it may not be 'well" or "in good safety" beyond that prescribed day An insurer's liability upon such warranty will depend whether the subject matter insured was "well" or 'in good safety" on the prescribed

1 *Woolmer* v *Muilman* (1763) 1 Wm Bl 427

2. *Eden* v *Parkinson* [1781] 2 Dough K. B. 732

3 *Price* v *Bell* (1801) 1 East 663; *Bell* v *Bromfield* [1812] 15 East 364 368.

4 *Dawson* v *Atty* [1806] 7 East 367 explained in *Bell* v *Carstairs* [1811] 14 East. 374 393 *per* Lord Ellenborough C. J.; *Hobbs* v *Henning* [1866] 17 C. B. N. S. 791; *Carruthers* v *Gray* (1812) 15 East 35] *Frender Anderson & Co* v *Thames and Mersey Marine Ins Co Frender Anderson & Co* v *North Queensland Ins Co Frender Anderson & Co* v *Weston Crocker & Co* [1898] 2 Q. B 114 C. A at p. 120. *per* Collins L.J

5 See *Clapham* v *Colegan* [1813] 3 Camp. 502 *Dent* v *Smith*, [1869] L. R. 4 Q. B. 414

day, if it was, he should be made liable and if not, his liability ceases But if it was not "well" or "in good safety" beyond the given day the insurer cannot absolve himself from his liability under the policy [1]

Warranty of seaworthiness of ship

41 (1) In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured

(2) Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port

(3) Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage

(4) A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured

(5) In a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness

SYNOPSIS

1 *Scope*
2 *Seaworthiness, meaning of*
3 *Manner in which ship to be seaworthy*
4 *Stages in the voyage and warranty of seaworthiness*
5 *Seaworthiness in a time policy*
6 *Burden of proof*
7 *Seaworthiness, whether a continuing warranty*
8 *U S A*

1 **Scope**—The section speaks of warranty of seaworthiness of a ship in respect of a voyage policy as well as of a time policy A warranty of seaworthiness is an implied warranty except in the case of a time policy Such a warranty relates, in case of a voyage policy to that (i) the ship at the commencement of the risk, must be reasonably fit to encounter the ordinary perils of the seas of the adventure insured, (ii) she must, while in port, be reasonably fit to encounter the ordinary perils of the port, and (iii) she must, in case where a voyage is performed in different stages, be seaworthy in

[1] See *Hankhurst* v *Cockell*, (1789) 3 Term Rep 360 see also notes under sect on 37, *infra*

respect of any preparation or equipment required for the purposes of those stages But in the case of a time policy there is no such implied warranty as attaches to a voyage policy, at any stage of the adventure except where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is absolved from liability for any loss which can be attributed to unseaworthiness

The section corresponds to section 39 of the English Act of 1906

2 Seaworthiness, meaning of—The word "seaworthiness" means the same thing with reference to a policy as it does with reference to a contract of carriage by sea [1] But the word as used in this section means that the ship must be reasonably fit in all respects in respect of a particular adventure insured to encounter the ordinary perils of the seas of that adventure

The standard of seaworthiness varies with the nature of the voyage insured It varies from one voyage to another, from one season of the year to another and from one kind of cargo to another kind [2] In short, a ship need only be made as seaworthy as is reasonably practicable by ordinary available means [3]

3 Manner in which ship to be seaworthy—The ship must be reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured The expression 'reasonably fit in all respects" would include that she must be (i) competent in hull, and (ii) be equipped with the necessary sails, tackle, stores, supplies, provisions, medicines and other things requisite for the safety of the voyage and those on board of her, and in the case of a steamship, she must have (i) her engines and boilers in sound and proper condition and (ii) an adequate supply of fuel for the voyage [4]

The ship should also be properly manned, i e, she must have a competent master and a competent and adequate crew and where a pilotage is compulsory, she must have a pilot on board [5] The master must also be reasonably in good health although not in perfect health [6]

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1 *Fireman's Fund Insurance Co v Western Australian Insurance Co Ltd* [1927] 33 Com Cas 36 following *Becker Gray & Co v London Assurance Corporation* [1918] A C. 101 H L.

2. See *Steel v State Line S S Co* [1877] 3 App Cas 72 H L. Ship to encounter whatever perils of the sea a ship of that kind and laden in that way may be fairly expected to encounter on the voyage insured *Daniels v Harris* [1874] L R 10 C P 1 ship laden with deck cargo *Stanton v Richardson Richardson v Stanton* [1874] L. R 9 C. P 390 Ex Ch affirmed [1875] 45 L. J Q B 78 H L. cargo of wet sugar

3 *Burges v Wickham* [1863] 3 B & S 669 *Clapham v Langton* [1864] 34 L. J Q. B 46 Ex Ch; *Hasseltyne v Mountain* [1904] 59 LI L. Rep 267 *Nova Fischerei Export-gesellschaft Hazelhorst etc v York shire Insurance Co Ltd* [1934] 50 LI L Rep 151 154

4 *Widderburn v Bell* [1807] 1 Camp 1 [sails] *Commercial Marine Insurance Co v Quebec Bank of Canada* [1870] L R 3 P C. 234 [boiler] *Wilkie v Geddes* [1815] 3 Dow 57 H L [anchors] *Beely v Clegett* [1800] 3 Esp 257 [medicines etc] *Tate v Hutchcroft & Co* [1862] 2 Q B 141 C A [insufficient coal] *Greenock S S Co v Maritime Insurance Co* [1903] 1 K B 362 [coal]

5 *Fenton v Dorr* [1811] 14 East 481; *Shore v Porticll* [Circa 1826] 7 B & C. 798 *Phillips v Headlam* [1831] 2 B & Ad 380

6 *Rio Tinto Co Ltd v Seed Shipping Co* [1926] 134 L. T 764

But a temporary defect which could be remedied or a port-hole being improperly left open would not make the ship unseaworthy [1]

4 Stages in the voyage and warranty of seaworthiness—The doctrine of stages in the voyage has been laid down in sub-sections (2) and (3) and the principles laid down therein enunciate exceptions to or modifications of, the general rule that the warranty of seaworthiness is not satisfied unless the ship is, at the beginning of voyage, seaworthy for the whole of that voyage, as laid down in sub-section (1) of the section

The first modification of the said rule as made by sub-section (2) is that, where the policy attaches while the ship is in port, there is an implied warranty that the ship shall at the commencement of the risk be reasonably fit to encounter the ordinary perils of the port This means that the ship must be capable of being moved from one part of the harbour to another for repairs and of being anchored alongside the wharves and quays at the harbour [2]

The second exception or modification as laid down in sub-section (3) is that where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage The principle as laid down in sub-section (3) purports to embody the law laid down in *Boutilon* v *Lupton*[3] and in *Dixon* v *Sadler*[4] but without touching this point

Illustrations

(i) A steamer insured at and from Lyons to Galatz sails with a river crew and captain and without her masts and anchors and other heavy articles as it was not possible for her to carry them on the river voyage, thereafter she takes on board her sea captain and some of her sea-going crew and is otherwise fitted for the voyage to Galatz *Held*, the ship satisfied the warranty of seaworthiness if she was riverworthy when she left Lyons and seaworthy when she sailed from Marseilles [5]

(ii) A steamer which could not carry enough coal for the whole of the insured voyage was obliged to divide the voyage into stages for the purposes of coaling on account of the necessities of the case but at the commencement of each stage she had on board sufficient coal for that stage, *i e*, she was seaworthy at each stage *Held*, the steamer was seaworthy [6]

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1 *Steel* v *State Line S S Co* (1877) 3 App Cas 72 H L *Hedley* v *Pinkney & Sons S S Co* (1892) 1 Q B 58 C A *see* also *Gilroy Sons & Co* v *Price & Co* (1893) A C 56 H L, in the instant case the defect was not capable of easy remedy and unseaworthiness was found

2 *Parruther* v *Cousins* (1809) 2 Camp 235 *Buchanan & Co* v *Faber* (1899) 4 Com. Cas 223

3 (1863) 15 C B N S 113

4 (1839) 5 M &W 405 414 affirmed *sub nom Sadler* v *Dixon* (1841) 8 M & W 895 Ex Ch

5 *Boutilon* v *Lupton* (1863) 15 C B N S 113

6 *Thin* v *Richards & Co* (1892) 2 Q B 141 C A followed in *The Torsgern* (1899) P 140 C A at p 155 15 T L R 259 *see* also *Greenock S S Co* v *Maritime Insurance Co* (1903) 1 K B 367 affirmed (1903) 2 K B 657 C A

5 Seaworthiness in a time policy —Sub-section (5) provides that in a time policy there is no implied warranty that the ship shall be seaworthy at any stage of the adventure[1], but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness[2] The underwriter is not liable if the unseaworthiness was a proximate cause, though not the sole cause, of the loss and if the assured was privy to the state of things which rendered the vessel unseaworthy, though he might not have formed the opinion that she was unseaworthy[3] But where the ship was sent to sea in a state of unseaworthiness in more than one respect and the assured was privy to some only of them the insurers' liability would depend whether the assured was privy to the particular defect which caused the loss[4] The owner cannot be held to be privy to any unseaworthiness on the mere omission to take precautions against the ship being unseaworthy, which such precaution might have disclosed[5]

6 Burden of proof —That a ship was unseaworthy is a question of fact and the burden of proof lies on the underwriter, but it may be shifted to the assured where the ship soon after sailing becomes disabled and founders[6]

7 Seaworthiness, whether continuing warranty —When a ship is originally seaworthy for the voyage insured it is not necessary that it shall continue to remain so throughout the voyage Thus when the policy is on a voyage out and home it is enough if the ship is seaworthy for the entire voyage when she sails first from the home port of lading even though the risk is entire and indivisible[7] It is also not necessary that the master and crew should do their duty throughout the voyage Hence, where the loss has been occasioned by the perils insured against it would be no defence to an action on the policy that there was negligence and misconduct of master and crew after the voyage has commenced[8]

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1 This principle is in accordance with the decisions in *Gibson* v *Small* (1853) 4 H L Cas 353 and *Dudgeon* v *Pembroke* (1877) 2 App Cas 284 H L *see* also *Ram Chandra* v *Gottliebi* 27 Bom L R 1310 1926 Bom 82

2 See *Thompson* v *Hopper* (1858) E B & E 1038 Ex Ch *Dungeon* v *Pembroke* (1877) 2 App Cas 284 *Mountain* v *Whittle* (1921) A C 615 H L *Frangos* v *Sun Insurance Office Ltd* (1934) 49 Ll L Rep 354 *Companta Naviera Vascongada* v *British and Foreign Marine Insurance Co Ltd* (1936) 54 Ll L Rep 55

3 *M Thomas & Son Shipping Co Ltd* v *London and Provincial Marine and General Insurance Co Ltd* (1914) 30 T L R 595 C A

4 *Thomas* v *Tyne and Wear Steamship Freight Insurance Association* (1917) 1 K B 938

5 *Compania Naviera Vascongada* v *British and Foreign Marine Insurance Co Ltd* (1936) 54 Ll L Rep 55 *see* Branson J

6 See *Pickup* v *Thames & Mersey Marine Insurance Co* (1878) 3 Q B D 594 C A *Tyser Graham Hessen & Co* v *Union Marine Insurance Co Hague Customs Journals* v *Ajum Goolam Hossen & Co* (1911) A C 362 P C approving *Anderson* v *Morice* (1874) L R 10 C P 58 68 *Parker* v *Potts* (1815) 3 Dow 23 H L *Dawdson* v *Fernand* (1868) L R 4 C P 117 *Lindsay* v *Klein* (1911) A C 194 *Douglas* v *Scougall* (1816) 4 Dow 269 H L *R Silcock & Sons Ltd* v *Maritime Lighterage & Forwarding Co Ltd* (1937) Ll L Rep 78 *Francis & Co*) *Ltd* (1937) Ll L Rep 78 C A *see also Pickup* v *Thames and Mersey Marine Insurance Co supra* especially the observations of Brett L J at p 601

7 *Bermon* v *Woodbridge* (1781) 2 Dough K B 781 *Redman* v *Wilson* (1854) 14 M & W 476

8 *Dixon* v *Sadler* (1839) 5 M & W 405 414 415 affirmed (1841) 8 M & W 895 Ex Ch *Berman* v *Woodbridge* (1781) 2 Dough K B 781 788 *Eden* v *Parkinson* (1781) 2 Dough K B 732 735 *Watson* v *Clark* (1813) 1 Dough 336 H L at p 344 *Busk* v *Royal Exchange Assurance Co* (1818) 2 B & Ald 73 *Biccard* v *Shepherd* (1861) 14 Moo P C C 471 *see also Dudgeon* v *Pembroke* (1877) 2 App Cas 284 H L *Redman* v *Wilson* (1845) 14 M & W 476 ; *Holdsworth* v *Wise* (1827) 7 B & C 794 *Walker* v *Maitland* (1821) 5 B & Ald 171 ; *Bishop* v *Pentland* (1827) 7 B & C 219 *Phillips* v *Headlam* (1831) 2 B & Ad 380 these are cases where negligence was the remote cause of loss

8 U S A—In U S A there is in marine insurance policies an implied warranty that the vessel is in all respects seaworthy and applies only to the commencement of the risk and each stage thereof To comply with this warranty the vessel must be fit in all respects to perform the voyage insured and to encounter the ordinary perils Seaworthiness depends on the nature of the ship, the voyage, and the service in which she is engaged but not on the amount of premium [1]

42 (1) In a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy

No implied warranty that goods are seaworthy

(2) In a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy.

SYNOPSIS

1 *Scope* 3. *Cargoworthiness of ship*

2 *Seaworthiness of cargo*

1 **Scope**—This section speaks of two warranties viz, seaworthiness of cargo and cargoworthiness of ship It corresponds to Section 39 of the English Act of 1906

2 **Seaworthiness of cargo**—Sub-section (1) provides that in a policy on goods or other movables there is no implied warranty that the goods or movables are seaworthy This provision is in accordance with the decision in *Kothel v Saunders* [2] The warranty of seaworthiness which is implied as to the ship does not extend to lighters employed to land the cargo [3]

3 **Cargoworthiness of ship**—Sub-section (2) provides that in a voyage policy on goods or other movables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy

Such warranty is not satisfied—(i) In a policy on a deck cargo if in ordinary rough weather the goods have to be jettisoned although it could be done without difficulty and the ship then could perform the voyage with safety, or (ii) where cattle were insured against mortality the mortality was insufficient [4] or (iii) where voyage being in respect of separate parcels of goods at separate times and warranties attaching at different times [5] when goods were insured under one policy [6] or (iv) where a ship laden with a cargo [7]

1 *See Corpus Juris Secundum* Vol 45 pp 2 (1864) 17 C B N S 71
3 *Lane v Mann* (1895) L R 1 Q B 396
4 *Dominion Insurance Co v* 5 *Thames & Mersey Marine Ins Co v* 6 *Thames & Mersey Marine Ins Co v*

of wet sugar and pumps not sufficient for the drainage of the cargo and the ordinary leakage of the vessel in consequence the ship cannot safely under take the intended voyage with such a cargo on board [1]

43 There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner

Warranty of legality

SYNOPSIS

1 *Scope*
2 *Illegal contracts of insurance*
3 *Contract with an enemy*
4 *Defendant need not raise the point of illegality*
5 *Insurance on neutral adventure*
6 *Illegality of part of insured voyage, effect of*

1 Scope —This section enacts what is known as warranty of legality Such a warranty need not be express It is implied in every adventure insured that it must be lawful and must be carried out in a lawful manner so far as the assured can control the matter

The section corresponds to Section 41 of the English Act of 1906

2 Illegal contracts of insurance —The courts of law generally declare those contracts void which have the tendency to lead to crime, immorality or other effects prejudicial to the public on the ground of public policy [2] But the law of insurance has departed from the above general rule of the law of contract partly due to the control by legislation of insurances without interest and by way of wagering In marine insurance contracts it has already been noticed that a policy of insurance on an illegal adventure is itself illegal and such a policy may also be void on the ground of public policy but caution in this respect must also be exercised in considering these cases as such policies as provided in this section also contain an implied warranty that the adventure insured is a lawful one and these two principles may not operate in the same way Thus, where the illegality causes the loss, as where the master of a ship engaged in smuggling with the connivance of the owner and the ship was therefore arrested, the principle that an assured cannot recover an indemnity for his crime operates Similarly, where the illegality exists or is contemplated by the assured, at the time the policy is taken out, as where a dock cargo had been loaded on a ship contrary to statute such an insurance is wholly void for illegality [3]

3 Contract with an enemy —The general rule of contract is that all contracts made with an enemy are void on the ground that such contracts might either enhance his resources or tend to assist the enemy [4] In *Potts v Bell* [5] it was first decided that no valid contract of insurance could be made during the war between a person in England and an enemy in a territorial

1 *Stanton* v *Richardson* *Richardson* v *Stanton* (1874) L R 7 C P 421 affirmed (1875) 45 L J Q B 70 H L.
2 *See Forton* v *Tregurtha* (1853) 4 H L C. 1 ; 10 E R 3.9 H L.
3 *See Pipon* v *Cope* (1766) 1 Camp 434 *Furtado* v *Rogers* and *Morse* v *Slue* (1916)
2 Q B at p 129 , *Cunard* v *Hyde* (1859) 2 E & F 1 7-8 per Lord Campbell
4 *See Rodriguez* v *Speyer Bros* (1919) A C. 59 66 *Ertel Bieber & Co* v *Rio Tinto Co* (1918) A C 260 273 *Trader Schroder* & *Co* v *Fortescued Ransom* (1916) 1 K. B 495
5 (1800) 8 Term Rep 548

sense [1] Later on the principle was enunciated that all insurances of enemy property are contrary to the public interest and that a loss occurring during the war cannot be recovered [2] These decisions postulate that policies taken out on enemy ships against capture by British ships were illegal and therefore void if made during the war and were abrogated if made before the war [3] But a loss before the outbreak of war is recoverable after the restoration of peace [4] But the fact that war is imminent or expected does not absolve the insurer from liability for loss of property by seizure [5] Moreover an insurance on an adventure remains valid although, by the outbreak of war, it becomes illegal for the assured to continue with the adventure and if he thereupon abandons it Similarly, the mere fact that property is in enemy territory does not make an insurance of that property illegal [7]

4 Defendant need not raise the point of illegality —Where a policy is void for illegality the court has power to take the point itself if it comes to its notice and will refuse to give judgment on the policy and in this regard the defendant need not raise the point nor the court would even assist the plaintiff in such a case where the defendant does not wish to raise the point [8]

5 Insurance on neutral adventure —Neutrals are generally entitled to carry on their trade with a belligerent subject to the latter's right of capture Therefore, the carriage of contraband goods and voyages in breach of blockade are not illegal and hence insurances on such goods or voyages are valid [9] But the rights of neutrals to trade with the enemy have been modified or abrogated by Act of Parliament or Order in Council, an insurance or an adventure disallowed by such Act or Order would doubtless be illegal An offence is committed when a British ship proceeds or attempts to proceed to sea in contravention of an order made under the Defence (General) Regulations, 1939, S R & O 1939 No 927 [10]

6 Illegality of part of insured voyage, effect of —The decisions on the question which presents difficulties tend towards the following propositions—(i) that any illegality in the prior stages, or at the outset, of an integral voyage vitiates a policy even though effected only to protect some later stage of it in which there is no illegality, (ii) that an illegality in any part of an entire risk or voyage insured vitiates the insurance as to the whole of it, (iii) that the illegality of a wholly distinct and separate voyage has no effect on the voyage insured by the policy [11] Whether a voyage insured is to be considered a distinct or a part of a voyage depends on the contract of affrightment and the circumstances under which it was made [12]

1 (1800) 8 T R 548
2 *Fellner* v *Le Mesurier* (1803) 4 East 396 *Gamba* v *Le Mesurier* (1803) 4 East 407 102 E R 887 *Brandon* v *Curling* (1803) 4 East 410
3 *Ibid* See also *Furtado* v *Rogers* (1802) 2 Bos & P 191
4 *Janson* v *Driefontein Mines* (1902) A C 484
5 *Ibid*
6 *British Marine* v *Sanday* (1916) A C 650
7 *Nugel Gold Mining Co* v *Hoade* (1901) 2 K B 849
8 *Gedge* v *Royal Exchange*, (1900) 2 Q B 214 220 per Kennedy J
9 *Re Grazebrook* v *Ex parte Chavasse* (1865) 34 L J Bcy 17 *Carne* v *Palace Steam Shipping Co* (1907) 1 K B 670 C A *Harratt* v *Wise* (1829) 9 B & C 712 *Naylor* v *Taylor*, (1829) 9 B & C 718
10 *See* Halsbury's Laws of England Vol 22 Simonds 3rd Ed p 33 note x
11 *See* Arnould on Marine Insurance 14th Ed S 739 *Sewell* v *Royal Exchange Assurance Co* (1813) 4 Taunt 856 *Wilson* v *Marryat* (1798) 8 Term Rep 31 46 affirmed (1799) 1 Bos & P 430 Ex Ch
12. *See* Halsbury's Laws of England Vol 22, Simonds 3rd Ed pp 34-35

THE VOYAGE

Implied condition as to commencement of risk

44 (1) Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced, the insurer may avoid the contract

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition

SYNOPSIS

1 *Scope*
2 *Insurance "at and from" or "from" a particular place*
3 *'In good safety," meaning of*
4 *Adventure must be commenced within a reasonable time*
5 *"The ship starts on the voyage insured," meaning of*

1 Scope—The section enacts that where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place it is not necessary that she should be at that place when the contract is concluded, but there is an implied condition that the adventure must be commenced within a reasonable time and on its failure the insurer may avoid the contract The section further says that this implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition

The section corresponds to Section 42 of the English Act of 1906

The provision in sub-section (2) settles one of the points left undecided in *De Wolf* v *Archangel Insurance Co* [1]

2 Insurance "at and from" or "from" a particular place—When a ship is insured at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately If she is not at that place when the contract is concluded the risk attaches as soon as she arrives there in good safety, and unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specific time after arrival [2]

The application of the rules aforementioned determining the *prima facie* meaning of the phrases at and from or "from" may either be excluded or modified by the terms of the policy and of the surrounding circumstances [3]

1 (1874) L R 9 Q B 451
2 See Schedule R 3(a) and (b) which is in accordance with the decision in *Haigh* v *Royal Mutual Insurance Co* (1854) L R 1 Ex Ch 203; but see *Marine Insurance Co* v *Marine Insurance Co* (1864) 35 L J C P 181 where a vessel covered by successive policies with the same underwriter was held that the later was intended to attach in substitution for the earlier When the subject-matter is insured from a particular place the risk does not attach until the ship starts on the voyage insured (See Schedule R 2)
3 *Hughes & Sons* v *Indian* (1895) 1 Com Cas 120 122

3 **"In good safety", meaning of**—A ship is deemed to be "in good safety" even though seriously damaged if she is in such a condition as to enable her to lie at the *terminus a quo* in reasonable security till she is properly repaired and equipped for her insured voyage [1]

4 **Adventure must be commenced within a reasonable time**—The section enacts that where a subject-matter is insured by a voyage policy "at or from" or "from" a particular place, there is an implied condition that the adventure must be commenced within a reasonable time and if it be not so commenced the insurer may avoid the contract The question as to what is a reasonable time is one of fact [2]

If the delay in arriving at the port where the insured risk was to commence was such as materially to alter the risk, as for exemple, to change a summer risk into a winter risk, and this delay even though was occasioned by perils of the seas or other unavoidable causes, the contract was held voidable [3] Whether the test laid down as above, prior to the English Act of 1906, should also be applied to this section there is a difference of opinion Arnould expressed a contrary view,[4] but in Halsbury's Laws of England it has been said that the same test should be applied under the Act [5] The delay in executing repairs at the port will not put an end to the risk unless the delay is such as to amount to an abandonment of the insured adventure [6]

5 **"The ship starts on the voyage insured", meaning of**—The ship is not deemed to have started on the voyage until she has, being in a state of complete preparation for the insured voyage, quitted her moorings and broken ground [7]

Alteration of port of departure

45 Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach

SYNOPSIS

1 *Scope* 2 *Port, meaning of*

1 **Scope**—This section speaks of alteration of port of departure When a voyage commences from a particular place it is called the *terminus a*

1 *Forbes* v *Wilson* (1800) 1 Parke's Marine Insurance 8th Ed 472 *Anneu* v *Woodman* (1810) 3 Taunt 299 but see *Bell* v *Bell* (1810) 2 Camp 475 where ship insured at and from Riga to the United Kingdom and immediately after her arrival at Riga her papers were seized and both ship and cargo were later sequestrated before discharge had taken place *held* the policy attached as the ship was in physical safety from the perils insured against although not free from political danger

2 *See* S 87 *infra*

3 *Hull* v *Cooper* (1811) 14 East 479 *De Wolf* v *Archangel Insurance Co* (1874) L R 9 Q B 451 *Maritime Insurance Co* v *Stearns* (1901) 2 K B 912.

4 *See* Arnould on Marine Insurance 10th Ed S 480

5 Vol 22 Simonds 3rd Edn p 63

6 *Chitty* v *Selwyn & Martyn* (1742) 2 Atk 359 *Grant* v *King* (1802) 4 Esp 175 *see* also *Camden* v *Cowley* (1763) 1 Wm Bl 417 *Cruickshank* v *Janson* (1810) 2 Taunt 301 *Harris* v *Miller* (1825) 4 B & C 538 but see *Palmer* v *Marshall* (1832) 8 Bing 317 *Palmer* v *Fleming* (1833) 9 Bing 460 where the delay discharged the underwriters

7 See *Pittegrew* v *Pringle* (1832) 3 B & Ad 514 crossing the bar without full ballast not a sailing *Sea Insurance Co* v *Blogg* (1898) 2 Q B 398 C A Anchorage moved preparatory to sailing not a sailing *Hunting & Son* v *Bolton* (1895) 1 Com Cas 120 sailing though still within limits of port *Cochrane* v *Fisher* (1835) 1 C M & R 909 Ex Ch every effort made to sail see also Notes under S 37 *supra*

quo The section enjoins that no risk attaches to a policy where it specifies a place of departure of the ship and she sails from any other place instead of the place named in the policy

The section corresponds to section 43 of the English Act of 1906

2 Port, meaning of —When the terminus "at and from" which the voyage is to commence is a port named in the policy, the word 'port' is generally presumed to mean that place which in the ordinary commercial sense is considered the port This meaning does not extend to all the different places it may comprise for purposes of revenue, or which may be included in the technical legal meaning of the word port [1]

46 Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach

Sailing for different destination

SYNOPSIS

1 *Scope*

2 *The voyage insured, incidents of*

1 Scope —This section speaks of sailing for different destination Where a place is mentioned at which the voyage is to end it is called the *terminus ad quem* The section enjoins that no risk attaches to the policy where it specified a place of destination but the ship sails for a distinction other than for the one mentioned in the policy The section corresponds to section 44 of the English Act of 1906

2 The voyage insured, incidents of —The incidents of a voyage insured or an insured voyage are that (1) a voyage policy should specify the voyage insured which means the voyage intended to be covered by the policy [2] It is also necessary to state in the policy the place at and from which the voyage is to commence and the place at which it is to terminate (2) the ship is bound, as a matter of course, to proceed from one terminus to the other with as much expedition as possible without trading at intermediate places by the usual and customary route [3] In this regard the under-writer is presumed to have knowledge of the usual or customary port or routes [4]

47 (1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage

Change of voyage

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[1] *Abbott v Noble* (1810) 2 Taunt 403 *Hayward v Hibbert* (1810) 2 Taunt 405 n *Lewis v Taylor* (1835) 4 Ad & El 241 *Thompson Sailing Ship Co v Hickie* (1885) 1 B D and C A 1 *Hamilton v Northern Assurance Co* (1) 13 App Cas H L *Marten Insurance Co Ltd v Insurance Co* (1927) 2 K B 600 *Thompson v Hickie* 25 and 27 *supra* *Lewis v Taylor* (1835) W Ad & El 241 *Redman v London* (1814) 5 Taunt 462

[2] *See Reardon Smith Line Ltd v Black Sea and Baltic General Insurance Co Ltd* The Ind an C (1939) A C 562 H L (1939) 3 All E R 444 in which it has also been said that a customary course need not be proved with the strictness of a legal usage

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested, and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs

SYNOPSIS

1 *Scope*

2 *Change of voyage and deviation from voyage, difference*

3 *Change of voyage and abandonment of voyage, essential features of*

1 Scope—This section speaks of change of voyage and its consequences A change of voyage occurs when the destination of the ship is voluntarily, after the commencement of the risk, changed from the destination contemplated by the policy The consequence of the change of voyage is that the insurer is, unless the policy otherwise provides, discharged from liability as from the time of change The time of change of the destination as contemplated by the section is when the determination to change such destination is manifested irrespective of the fact whether the ship has left the course of voyage as given in the policy when the loss occurs

The section corresponds to section 45 of the English Act of 1906

2 Change of voyage and deviation from voyage, difference—See notes under section 48, *infra*

3 Change of voyage or abandoment of voyage, essential features of—Change of voyage is also known as abandonment of voyage Its essential features are—(i) the change of destination of the ship from the one contemplated by the policy is voluntarily made, (ii) such change must be after the commencement of the risk, and (iii) the determination of the change is manifested, irrespective of whether the ship in fact has left the course of voyage contemplated by the policy or not [1]

Deviation

48 (1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs

(2) There is a deviation from the voyage contemplated by the policy,—

(*a*) where the course of the voyage is specifically designated by the policy, and that course is departed from ; or

1 See *Ionides v Pender* (1874) L R 9 Q B 531 and *Bentley v Gladstone* (1780) 1 Dougl 395 & *Driscoll v Passmore* (1797) 1 Esp 325 and *Bentley v Gladstone* (1780) 1 Dougl 395 when a purpose of abandoning the original place of destination for another destination is manifested, and *Williams v Williams* (1787) 2 Term Rep 303 *Bentley v Gladstone* (1780) 1 Dougl 395 & *Cowie v Carter and Kerr* [1918] A C 307 where a change of destination is manifested

(*b*) where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from

(3) The intention to deviate is immaterial, there must be a deviation in fact to discharge the insurer from his liability under the contract

SYNOPSIS

1 *Scope*
2 *Change of voyage and deviation from voyage, difference*
3 *A deviation or a change of voyage is a question of fact*
4 *Touch and stay clause*
5 *Special clause*
6 *Notice of deviation*

1 **Scope**—While speaking of deviation from the voyage contemplated by the policy, this section deals with three matters the sub-section (1) provides that the insurer is discharged from liability as from the time of deviation if such deviation is made without any lawful excuse and it would be a deviation even if the ship may have regained her route before any loss occurs in sub section (2) the expression "a deviation from the voyage" has been defined to mean (*a*) in case where the course of the voyage is specifically designated by the policy, when that course is departed from, and (*b*) in case where such course is not specifically designated by the policy, when the usual and customary course is departed from, and in sub-section (3) it provides that the insurer is discharged from his liability under the contract when there is a deviation in fact and any intention to deviate in this regard is immaterial

The section corresponds to section 46 of the English Act of 1906

2 **Change of voyage and deviation from voyage, difference**—(*i*) In change of voyage, the voluntary change of the destination of the ship from the destination contemplated by the policy to some other place is made, while in the case of deviation from the voyage the change of the course of the voyage from the one specifically designated by the policy to some other course, or where such course is not specifically designated by the policy the change of the course of the voyage from the usual and customary course, is made (*ii*) In change of voyage, the insurer is discharged from liability as from the time when the determination to change the destination is manifested and not in fact occurred when the loss happens, while in the case of deviation from the voyage the insurer is discharged from liability as from the time of deviation which must, in fact be made and not contemplated irrespective of whether the ship may have regained her route before any loss occurs[1] (*iii*) In change of voyage the underwriter is *ipso facto* discharged from liability for all subsequent losses as soon the determination to change the destination is manifested[2] while in the case of deviation from the voyage the underwriter is discharged from liability for all losses occurring after actual departure[3] but he remains liable for all previous losses[4]

1 See *Hamilton* v *Sheddon* (1837) 3 M & W 49 *Thellusson* v *Ferguson* (1760) 1 Dough K B 361 intention to deviate is not sufficient

2 *Weekes dec* v *Fendall* (1 E) 1 Dough K B 11 *Hoyes* v *Micdleton* (1767) 2 Term Rep 30 *Bottomley* v *Bonill* (1826) 5 B & C 210

3 *Hamilton* v *Sheddon* (1837) 3 M & W 49

4 *Hare* v *Travis* (1841) 7 P & G 14 *Kingston* v *Phelps* (1785) cited in 7 Term Rep at p 165

3. A deviation or a change of voyage is a question of fact.—The question whether a ship departing from the proper course of the insured voyage would constitute a change of voyage as contemplated under section 45 or a deviation from the voyage as contemplated under this section is a question of fact and not a question law to be determined with relation to the fact whether or not in the given circumstances a definite determination was formed and manifested to abandon the adventure as covered by the policy.[1] Thus, in the case of a vessel insured to numerous ports, it is not a change of voyage if she sails for one of them only, for in such a case a voyage to all or any of the places is intended.[2] Similarly, where goods insured from the interior of Africa to any ports in Europe or U.S.A. were gathered from the interior of Africa, taken to an ocean port, stored at that port and shipped to Europe or U.S.A. as and when ocean steamers were available it was held that, although it was impossible to specify the ultimate destination of the goods until they were actually on the ocean steamer yet there had been no change or abandonment of voyage because the goods were at all times destined for some port in Europe or U.S.A.[3] In the case of a marine policy covering a land transit following on sea voyage the *terminus ad quem* of the sea voyage has alone to be taken into consideration in determining whether the policy ever has attached.[4] The mere fact of taking in goods and clearing out for a different port to that specified in the policy as the *terminus ad quem* does not, *per se*, amount to a change of voyage.[5]

4. Touch and stay clause.—In the absence of any further express or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.[6]

The principles as deduced from decided cases may be summarised as follows:

(i) The extent of the powers the clause confers on the ship has to be judged not by its literal or strict meaning of the terms such as, "to call", "to touch" or "to touch and stay" but by reference to the true scope and nature of the adventure contemplated by the policy.[7]

(ii) The clause does not confer a power to visit other ports than that which appears to have been the course of the voyage insured as contemplated by the parties, the intention of the parties having to be gathered from a proper interpretation of the whole policy.[8]

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1 *Woodrigge v Boydell* (1778) 1 Dough K B. 16

2 *Marsden v Reid* (1803) 3 East 572.

3 *Nige & Co Ltd v Guardian Assurance Co., Ltd* (1922) 13 Ll.L.R. 75 H.L. *affirming Hewitt v London General Insurance Co Ltd* (1923) 23 Ll L. R. 213

4 *Simon Israel & Co v Sedgwick* (1893) 1 Q. B. 303 C. A.

5 *Pirie & v Fletcher* (1779) 1 Dough. K. B. 251 *Feeley v Rees*., (1794) 2 Hy B. L. 343

6 *See* Schedule R. 6 *see* also *Hall & Alder & Sons Ltd v Anderson and Perry & S S Co* (1906) 11 Com Cas 219 22 T L R 600 for licence in a bill-of lading

7 See *Metcalfe v Parry* (1814) 4 Camp 123; *Pratt v Addie* (1814) Exch 258, Ex Ch; *Arnot v Innes* (1820) 4 Moore C. P. 150; *Hewitt v London* (1923) 16 Ll. L. Rep. 65 affirmed (1924) 1 Lloyd's Rep. 417 H.L. (Ch); *Lawrence v Liddard*, (1814) 5 Taunt 490 *Lawrence v Stirling* (1816) 5 M & S. 1 *Lawrence v Maxwell* (1814) 5 Taunt 490 H.L. Ch

8 *Kingston Steam Ship Co v Ferry* (1911) 104 L.T 597; *Lawrence v Hebert* (1815) 1 Dough K. B. 254 280; *Hay v Hunt* (1811) 2 Park's Marine Insurance 8th Edn 1491; *Rotch v Potter* (1814) 2 Park's Marine Insurances 8th Edn, 1211; *Seamans v Maxwell supra Hamel v Stallen* (1837) 3 M & W 49 *Hibbert v Shee* (1819) 1 Chit 309 *Lethbridge v Jewill* (1 [illegible] 210

(iii) The clause does not authorise the ship to visit any port although the latter is within the local limits of the voyage insured for any purpose which is not connected with the main object of the adventure [1]

(iv) Any trading, breaking bulk, landing or loading cargo, however foreign to the main object of the adventure, will not make the visit of a port allowed for a certain purpose to visit that port, a deviation, if the trading, breaking bulk, landing or loading cargo is completed during the ship's lawful stay in such port without additional delay or substantial variation of the risk [2]

(v) But if trading as aforementioned gives rise to delay that would not otherwise have been made, it may afford a defence to the underwriter [3]

It may be noted that where a policy in specific terms describes the course which the ship has to take between the two terminii, such course must be strictly followed and where the policy provides for one intermediate port at which she may touch, this may bind her not to touch at any other intermediate port, on the principle *expressio unius est exclusio alterius* [4]

5 **Special clauses** —Modern policies generally contain special clauses by which the insurers agree to cover the risk in case of deviation or change of voyage at an extra premium to be afterwards arranged But such clause at an extra premium does not cover unreasonable delay before the commencement of the insured voyage [5] Similarly, the clause will have no application where the risk has never attached [6] This clause sometimes requires due notice to be given by the assured on receipt of advice, and this obligation, even if not expressed, will be implied [7]

The clauses, such as, Institute cargo clauses, Institute strike clauses (extended cover) and Institute War clauses are also inserted in the policies to cover deviation or change of voyage

6 **Notice of deviation** —A notice of deviation to the underwriter to deviate from the usual and customary course will not prevent the underwriter from being discharged when no liberty to do so is given by the policy But it may be an evidence of waiver not to deviate when considered with other circumstances [8]

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1 *Langhorn* v *Allnutt* (1812) 4 Taunt 511 *Hammond* v *Reid* (1820) 4 B & Ald 72 *Solly* v *Whitmore* (1821) 5 B & Ald 45 *Laing* v *Union Marine Insurance Co Laing* v *London Assurance Corporation* (1895) 1 Com Cas 11 cf *Violetti* v *Allnutt* (1811) 3 Taunt 419 *Ledue* v *Ward* (1888) 20 Q B D 475 C A *Glynn* v *Margetson & Co* (1893) A C 351 H L bill-of lading cases

2. *Urquhart* v *Bannord* (1809) 1 Taunt 450 *Laroche* v *Oswin* (1810) 12 East 131 *Rowe* v *Bell* (1808) 9 East 195 *Cormack* v *Gladstone* (1809) 11 East 347 *Ware* v *Miller* (1825) 4 B & C. 538

3 *Company of African Merchants* v *British and Foreign Marine Insurance Co* [1873] L. R 8 Exch 154 *see* also S 50 *infra* Arnould on Marine Insurance 14th Edn S 411 22

4 Halsbury s Laws of England, Vol Simond s 3rd Edn PP 70-71 citing *Elliot* v *Wilson* (1776) 2 Pro Parl Cas 470 H.L.

5 *Maritime Insurance Co* v *Steams* [1901] 2 K B 912

6 *Simon Israel & Co* v *Sedgewick* (1893) 1 Q B 303 C A

7 *Thames and Mersey Marine Insurance Co Ltd* v *Van Laun & Co*, (1905) (1917) 2 K. B 48 n H L. applied *Good* v *Wilson End Motor Car Packing Co* (1917) 2 K. B 38 C A for what is due notice see *Mentz Decker & Co* v *Maritime Insurance Co Ltd* (1910) 1 K. B 132 and *Hewitt* v *London General Insurance Co Ltd* (1925) 23 Ll L. R 243

8 *Redman* v *Lowdon* (1814) 5 Taunt 462.

Several ports of discharge

49 (1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy If she does not, there is a deviation

(2) Where the policy is to "ports of discharge", within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not, there is a deviation

SYNOPSIS

1 *Scope* 2 *Order in which ship must proceed to ports*

1 Scope—This section speaks of the order in which the ship must proceed to ports where several ports of discharge are specified in the policy or where the policy is to "port of discharge" within a given area which are not so named The section also enacts that where she does not proceed to them in the order or manner laid down in sub sections (1) and (2) there is a deviation The consequences of such deviation will, therefore, attract the provisions of section 48, that is to say, the insurer is discharged from liability as from the time of deviation irrespective of the ship might have been regaining the route before any loss occurs or irrespective of any intention to deviate

The section corresponds to section 47 of the English Marine Insurance Act, 1906

2 Order in which ship must proceed to ports—Sub-section (1) provides that where several ports of discharge are specified by the policy the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy If she does not, there is a deviation[1] A ship insured to several ports need not visit them all, but if she goes to more than one, she must take them in the order named in the policy[2]

Sub-section (2) provides that where the policy is to "ports of discharge" within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order If she does not, there is a deviation.[3]

Delay in voyage.

50 In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable despatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable

1 *Beatson* v *Haworth* (1796) 6 Term Rep 531; *Marsden* v *Reid* (1803) 3 East 572 577

2. As to cases where a ship is insured at and from some one named port of departure and other port or ports See *Bregg* v *Anderson*, (1812) 4 Taunt 258 *Lerbert* v, *Liddard* (1814) 5 Taunt 480 *Pratt* v *Ashley* (1847) 1 Exch 257, Ex Ch, *Brown* v *Taylor* (1835) 4 Ad & El 241

3 *Glason* v *Simonds* (1741) cited in 6 Term. Rep at p 533, *Andrews* v *Mellish*, (1814) 5 Taunt 496 Ex Ch

SYNOPSIS

1 *Scope* 2 *Condition of reasonable despatch*

1. Scope —This section speaks of delay in voyage and when there is unreasonable delay in the adventure insured being prosecuted throughout its course, the insurer is discharged from liability as from the time when such delay became unreasonable But lawful excuses for the delay are excepted from the section

The section corresponds to section 48 of the English Act of 1906

2 Condition of reasonable despatch —In a voyage policy, besides the conditions that there shall be no change of voyage insured or deviation from the voyage, there is a further condition that the adventure insured shall be prosecuted throughout its course with reasonable despatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from the time when the delay became unreasonable What is a reasonable time is a question of fact[1] In *Phillips* v *Irving*,[2] which is a leading case on the subject, the principle laid down is that whether the delay at the port where the ship happens to be is reasonable or not must be determined, not by any arbitrary rule, but by the state of things existing at the port The same principle was applied in *Grant* v *King*[3]

The insurance ceases to be in force where the delay exceeds a reasonable time (*i*) at the *terminus a quo*, or (*ii*) during the voyage, or (*iii*) at the *terminus ad quem*, or (*iv*) where it occurs for purposes unconnected with the object of the voyage[4]

51 (1) Deviation or delay in prosecuting the voyage contemplated by the policy is excused,— Excuse for deviation or delay

(*a*) where authorised by any special term in the policy, or

(*b*) where caused by circumstances beyond the control of the master and his employer, or

(*c*) where reasonably necessary in order to comply with an express or implied warranty, or

(*d*) where reasonably necessary for the safety of the ship or subject matter insured, or

(*e*) for the purpose of saving human life or aiding a ship in distress where human life may be in danger, or

(*f*) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship, or

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1 *See* S 87 *infra*
2. (1844) 7 Man & G 325
3 (1802) 4 Esp 175
4 *Cullen* v *Sclwyn* (1742) 2 Atk 359 *Hartley* v *Buegin* (1781) 3 Dough K B 39 *Grant* v *King* (1802) 4 Esp 175 ; *Sewell* v *Royal Exchange Assurance Co* (1828) 8 B & C 116 *Mount* v *Larkins* (1831) 8 Bing 108 *Depa* v *Pocell* (1832) 4 B & Ad 267 *Hamilton* v *Sheldon*, (1837) 3 M & W 49 *Pearson* v *Commercial Union Assurance Co* (1876) 1 App Cas 498 504

(g) where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage, with reasonable despatch.

SYNOPSIS

1	*Scope*		*page*
2.	*Causes excusing deviation and*	3.	*Exemption of crew.*

1. Scope.—The section enacts that deviation or delay which is fatal to the recovery where a policy can be excused under circumstances which have been enumerated in clauses (*a*) to (*g*) of subsection (1). These excuses are statutory excuses but it is doubtful whether excuses have been exhaustively dealt with in the section. It should also be remembered that the question of excuse can never arise as to whether there is any deviation or delay or not where at the time the ship sails she was unseaworthy, is not sufficiently manned equipped or furnished with supplies.[1]

Subsection (2) provides that where the cause of excuse ceases to exist the ship must resume her course as usual and prosecute her voyage with reasonable despatch. The question whether the ship has prosecuted her voyage with reasonable despatch is one of fact.[2]

The section corresponds to section 49 of the English Act of 1906.

2. Causes excusing deviation and delay.—The causes which excuse deviation or delay as contemplated by the section are

(i) *Where authorised by any special term in the policy.*—Such special term may include where the subject-matter insured is covered on payment of an additional premium but the authority cannot be extended to objects not mentioned in the policy as the maxim *expressio unius est exclusio alterius* will apply to such a case.[3]

(ii) *Where caused by circumstances beyond the control of the master and his employer.*—The causes contemplated by this clause are involuntary causes which may include (*a*) necessity of repair, (*b*) perils of the sea, (*c*) mutiny amongst the crew, (*d*) forcible detention by a warship, or (*e*) an embargo preventing landing.[4]

(iii) *Where reasonably necessary in order to comply with an express or implied warranty.*—This clause includes the delay at the port to make the ship seaworthy or at the intermediate port to make her so at the next stage of the voyage insured.[5]

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1 See *O'Reilly v. Exchange Assurance* (1815) 4 Camp. 246; *Hamilton v. Glasgow* (1900) 2 Esp. 257.

2. See S. 87 *infra*.

3 *Dodd v. Persil* (1832) 4 B. & Ad. 267; *Elam v. Hosier* (1776) 4 Bro. Parl. Cas. 470; *H. L. Emes v. Bridge* (1870) 2 Beaugh K. B. 526; *Peters v. Anderson* (1805) 1 East 202.

4 *Harrington v. Halliday* (1778) 2 Park's Marine Insurance 8th Edn., 636; *Driscoll v. Fenton* (1788) 1 Peake, 3 P. 313; *Phelps v. Auden* (1809) 2 Camp. p. 350; *Schmidt v. Thompson* (1817) 7 Taunt. 462; *Hamilton v. Mayhew*, (1800) 3 Esp. 257; *Cowie v. Kirby* (1802) 4 Esp.

5 *Small v. Shedden* (1901) 4 Esp. 25; *Kemp v. Lay* (1830) 10 C. & P. 1; *Cameron & Co. et al.* (1870) 1 All. 345, 350 under Ss. 37 and 41 *infra*.

(iv) *Where reasonably necessary for the safety of the ship or subject matter insured* —This clause covers both the safety of the ship or subject-matter insured, and is not limited to the necessity of saving the ship or the subject-matter insured from some perils insured against [1]

(v) *For the purpose of saving human life or aiding a ship in distress where human life may be in danger* —This clause does not excuse a deviation made solely for the purpose of saving property [2]

(vi) *Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship* —This clause is ancillary to what has been stated immediately before it

(vii) *Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against* —The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer [3] But a deviation is not excused under this clause on account of the negligence or want of skill of the master, however gross it may be [4]

3 **Resumption of course** —Sub-section (2) provides that when the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch The sub-section does not point that the ship must return to the actual spot where from she deviated but the clause means that she must do her utmost to get to the *terminus ad quem* of the voyage [5]

U S A —In U S A the general rule is that the liability of a marine insurer terminates if there is a deviation or change of risk without just cause Any unexcused departure from the regular course or route of the insured voyage, or any other act which substantially alters the risk, constitutes a deviation

Where there is any unreasonable delay in commencing the voyage or where the master or authorised agent determines, prior to the commencement of the risk, not to sail on the insured voyage or to abandon the original termini of the insured voyage, there is a change of voyage or abandonment and the policy does not attach, although part of the voyage lies over the same course The determination to abandon the voyage should be made to appear by clear terms or unambiguous conduct [6]

A deviation is justifiable or excusable if caused by reasonable or unavoidable necessity, or if done under compulsion The necessity which

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1 See *Jones Phelps and Co v Hill* (1891) 1 Q B 605 *Duncan v Koster* The Teutonia [1872] L R 4 P C 171 enumerating the elements of reasonable necessity Even apprehension of capture comes within the clause *[Anderson v San Roman* (Owners) The San Roman (1873) L.R 5 P C. 301 It is also an excuse within the meaning of this clause between a ship-owner and a cargo owner The Teutonia (1872) L.R. 4 P C. 171 *infra Anderson v San Roman (Owners) The San Roman supra*

2 *Scaramanga v Stamp* (1880) 5 C.P D 295 C.A

3 *See* Schedule R 11

4 *Pelly v Royal Exchange Assurance Co* (1757) 1 Burr 341 *Rose v Hunter* (1795) 4 Term Rep 33 *Herrington v Hallett* (1778) 2 Park's Marine Insurance 8th Edn 630 *Delaney v Stoddart* (1785) 1 Term Rep 22. *Merrill v Boylston Fire and Marine Insurance Co* 3 Allen 247 *Conners v Insurance Co* 3 Cush 133 *Talcot v Wells* 4 Day Cas No 12 253 *Talcot's Marine Insurance Co* 2 Johns 130

5 *See* Schedule R 11

6 *Pelly v Royal Exchange Assurance Co* (1757) 1 Burr 341 *Rose v Hunter* (1795) 4 Term Rep 33 *Herrington v Hallett* (1778) 2 Park's Marine Insurance 8th Edn 630 *Delaney v Stoddart* (1785) 1 Term Rep 22. *Merrill v Boylston Fire and Marine Insurance Co* 3 Allen 247 *Conners v Insurance Co* 3 Cush 133 *Talcot v Wells* 4 Day Cas No 12 253 *Talcot's Marine Insurance Co* 2 Johns 130

excuses a deviation must be the result of physical or moral force, and must be real and impervious, imminent and obvious[2] Thus, deviation is excused or justified if caused by the necessity of repair, provision and outfit for the vessel or of saving life or property or of avoiding peril not insured against, or of avoiding capture or confiscation or on account of stress of weather joining convoy or transhipping cargo[2] But an unintentional departure from the proper course, through ignorance, mistake, or want of skill on the part of the master is not a justifiable deviation[3] A mere convenience or apprehension of danger is not sufficient[4]

ASSIGNMENT OF POLICY

When and how policy is assignable

52 (1) A marine policy may be transferred by assignment unless it contains terms expressly prohibiting assignment It may be assigned either before or after loss

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name, and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected

(3) A marine policy may be assigned by endorsement thereon or in other customary manner

SYNOPSIS

1 *Scope*
2 *Assignment*
3 *Assignee vis-a-vis the defendant*
4 *Assignment by endorsement or in other customary manner*
5 *Endorsement, meaning of*
6 *U S A*

1 Scope —This section and section 53 deal with transfer of marine policies The section enacts that such transfer can be effected by way of assignment which may be made by endorsement on the policy or in any other customary manner Such assignment may be made either before or after loss On assignment of the policy, the assignee has the right of suit, *i e*, he can bring a suit on the policy in his own name In such a suit the defendant has been given the power to put forth such defences as he could do had the suit been brought by the policy-holder himself, *i e*, he has the

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1 *Crosby* v *Fitch* 31 Amd 745 *Burgess* v *Equitable Marine Ins Co* 126 Mass 70 *Pelopsco Ins Co* v *Coulter* 7 L Ed 659 *Tweedie Trading Co* v *Western Assurance Co* 168 F 962 affirmed 179 F 103

2 *Crozier* v *Philadelphia Ins Co* 2 Wash C C 262 *Northwestern S S Co* v *Maritime Ins Co*, C C Wash 161 } 166 *Peterson* v *The Dhandas D C Or* 4 F 645 *The Iroquois* 194 U S 240 for seeking medical or surgical assistance on humanitarian grounds *Reare* v *Commercial Insurance Co* 3 Johns 352 *Lee* v *Grey*, 7 Mass 349

3 *Riggin* v *Pelopsco Insurance Co* 16 Am D 302 contra *Brazier* v *Clap* 5 Mass 1

4 *Oliver* v *Maryland Insurance Co* 3 L Ed 414 *Neilson* v *Colerb on Insurance Co* 1 Johns 301 *Riggin* v *Pelopsco Insurance Co supra see* also Corpus Juris Secundus Vol 45 pp 566-571

right, in defence, to impeach the contract of insurance The reason being that on assignment the beneficial interest in th policy assigned passes to the assignee from the assignor

Prior to this Act, transfer of marine policies was governed by section 130A and 135A of the Transfer of Property Act (IV of 1882) Section 135 A dealt with the transfer of a policy of marine insurance while section 130A provided for the rights, etc , arising in consequence of such assignment of rights under the policy Sub section (1) of this section generally re-enacted the provisions in sub-section (1) of section 130A of the Transfer of Property Act, while sub-section (2) re enacted the provisions contained in sub-section (1) of section 135A of the said Act, and sub-section (3) re enacts what is contained in sub-section (2) of section 130A of the Transfer of Property Act[1]

The section corresponds to section 50 of the English Act of 1906

2 **Assignment** —Sub-section (1) provides that unless the policy contains terms expressly prohibiting assignment, a marine policy may be transferred by assignment Such assignment may be made either before or after loss[2] Even assignment of claim without assigning the policy is permissible[3] Even also the consent of the underwriter is not necessary to the validity of the assignment unless a policy imposes such a condition[4]

3 **Assignee vis a-vis the defendant** —Sub section (2) enjoins that where a marine policy has been assigned so as to pass the beneficial interest in such policy the assignee of the policy has the right to sue on the policy The defendant in such an action has been given the right to put forth any defence arising out of the contract which he would have been entitled to make if the suit had been brought in the name of the person by or on behalf of whom the policy was effected

It has been said that the 'beneficial interest' referred to above means the whole beneficial interests[5]

A defence of concealment by the assignor arising out of the contract of marine insurance,[6] or the defence that the loss was attributable to the wilful misconduct of the assured,[7] will be a good defence in an action upon an assignment But if the loss is proximately caused by and not merely attributable to the wilful misconduct of the assured, the insurer will not be liable to third party even if separately insured[8] A defence pleading for a set-off of premiums due from the assignor is not available under this section as the claim under the policy is unliquidated[9] The assignee's right under the policy extends to the extent to which the assured has agreed to assign his rights to him and not beyond that[10]

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1 *See* Commentary on the Insurance Act s 50 in Part I

2 *Lind v Mitsui* (1872) L R 7 Q B 299

3 *Sloan and Chilvers Cranny Dick & Johnson Co v Marine Insurance Co and Crathorne* (1897) 1 L R 11 Ir 123

4 *Lewis v West Hartlepool Steamship Third Party Andersons and Dodd* (1899) 4 Com Cas 322, where the policy immediately

5 *Scott v Irving & Co Ltd* (1899) 1 Q B D C A

6 *Britain Steamship Co Ltd v Louis Dreyfus and Co* (1916) 2 K B 354

7 *Lawrence & Co Ltd v Maclaine Watson & Co Ltd* (1917) 2 K B 1 H L

8 *P Samuel & Co Ltd v Dumas* (1924) A C 431 H L

9 *Pelton Steamship Co v Provincial Insurance Co* (1920) 5 C L D 38 C A *Carlton v Fullerton* (1892) 1 Q B 35 C A *Ionides v Universal Marine Insurance Co* (1863) 14 C B N S 259 *Baker v Adam* (1910) 15 Com Cas 1 *see also Cyril Jay Smith and Pound Mercantile Law* 13th Ed p 1 J

4. **Assignment by endorsement or in other customary manner.**—Subsection (3) provides that a marine policy may be assigned by endorsement thereon or in some customary manner. An assignment by mere delivery is not a "customary manner"[1] but endorsement in blank (so that the creditor who obtained the policy can then or the assured assigns all claims on the policy to a holder of it.[2]

5. **Endorsement, meaning of.**—The word "endorsement" means "writing written or printed upon the back of deed or writing".[3]

6. **U.S.A.**—In U.S.A. usual clauses to that effect a policy is avoided if the insured property is transferred or policy assigned without the underwriters' consent.[4] Only the endorsement can give advantage of a clause in the policy providing that it shall be void if assigned without the consent of the insurer but an attempting creditor cannot do so.[5] See also *Hagen v. Smith's Union and Phoenix Ins. Co.*[6] where a clause "for the account of whom it may concern" in a policy was held to insure to the benefit of a subsequent vendee and to prevail over a printed stipulation about the voidance of the contract if change occurs in the interest title etc. of the subject-matter insured.

Assured who has no interest cannot assign.

53 Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this section affects the assignment of a policy after loss.

SYNOPSIS

1 *Scope*
2. *Assignment after loss of interest*
3 *Agreement of assignment before loss of interest.*
4 *Assignment after loss permissible*
5. *U.S.A.*

1 **Scope**.—This section enacts that where the assured has parted with or lost his interest in the subject matter insured, any subsequent assignment of the policy becomes inoperative unless before or at the time of so doing he has, expressly or impliedly agreed to assign the policy.[7] But proviso to the section saves the assignment of policy after loss

The section corresponds to section 51 of the English Act of 1906

This section re-enacts sub-section (8) of section 130A of the Transfer of Property Act (IV of 1882)

The reason behind the enactment is that a marine policy is not an incident to the property insured and hence a transfer of the property insured does not *per se* effect the transfer of a policy to the assignee

2 **Assignment after loss of interest**.—Where the assured parts with or transfers the whole of his interest in the subject matter insured before the

1 *Baker v. Adam* (1910) 15 Com Cas. 227 at p. 230 *per* Hamilton J.
2 *J. Aron & Co. (Incorporated) v. Maud* (1928) 34 Com Cas 18 C.A.
3 Wharton's Law Lexicon
4 *Lazarus v. Commercial Ins. Co.*, 5 Fick 76.
5 *Pennsylvania Insurance Co. v. Trust Co.* 104 Pa. 3
6 186 U.S. 403
7 Compare assignment of *ante*

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1 *See* Commentary on the Insurance Act S 58 in Part I

2 *Lloyd v Fleming* (1872) L R 7 Q B 299

3 *Sloan and Cleland v Grazing Dock and Shipway Co v Maritime Insurance Co and Crosbie v* (1907) 1 K B 116 123

4 *Lewis v West Hartlepool Steamship Third s Indemnity Association and Dodd* (1899) 4 Com Cas 322 where the policy imposed such a condition

5 S E Redgrave v Atlantic Assurance Co Ltd (1919) 1 K B 81 C A

6 Wilson Holgate & Sons Ltd v London & Provincial Marine and General Insurance Co Ltd (1921) 3 K B 114

7 Compania Naviera Micro Sarl Co Ltd v Merchants Marine Insurance Co Ltd (1924) A C 291 H L

8 *P Samuel & Co Ltd v Dumas* (1924) A C 431 H L

9 *Pellas v Neptune Marine Insurance Co* (1869) 5 C P D 34 C A *Castelli v Boddington* (1852) 1 E & B 66 (Ex Ch) *see also Baker v Adam* (1910) 15 Com Cas 227 *see also Gyerslid Jagannath Prasad Marwari Pandit Sitaharan Dubey* 1963 M P L J 162 1963 Mad L P Gra. 164 Motor Insurance

10 *Jones v Hertford* (1859) 29 L J Ex 5 *Stears v Sprowle and Baker Ltd* (1911) 3 K B 749 *see Read v Lawrence Marine Insurance Co* (1902) 4 De G F & J 1 *Le Fevre v Assur* (1905) 2 K B 1 C A (see Halsbury's Laws of England vol 1 p 173 *et seq*)

4 Assignment by endorsement or in other customary manner — Sub-section (3) provides that a marine policy may be assigned by endorsement thereon or in other customary manner An assignment by mere delivery is not a "customary manner",[1] but endorsement in blank first by the brokers who effected the policy and then by the assured assigns all claims on the policy to a holder of it[2]

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Assured who has no interest cannot assign

Provided that nothing in this section affects the assignment of a policy after loss

SYNOPSIS

1 *Scope*
2 *Assignment after loss of interest*
3 *Agreement of assignment before loss of interest*
4 *Assignment after loss permissible*
5 *U S A*

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1 *Baker* v *Adam* (1910) 15 Com Cas 227 at 230 *per* Hamilton J
2 *J Aron & Co (Incorporated)* v *Mill* (1 Com Cas 18 C A
3 Wharton's Law Lex con
4 *Lazarus* v *Commonwealth Insurance Co*, 5 Fed 76
5 *Pennsylvania Insurance Co* 32
6 98 U S 422
7 Company amalgamation and

loss without assigning or agreeing to assign the policy or to hold the same for the benefit of the transferee, the policy becomes unavailable to anyone[1] But it would be otherwise if he parts only with a portion of his interest, for instance, where he mortgages or pledges the insured property[2]

3 **Agreement of assignment before loss of interest**—Where at the time of the transfer of the insured property, the transferor assigned the policy or agreed to assign it or to hold it for the benefit of the transferee, the latter has the right to bring an action on the policy in the name of the assured[3] Even such an action would lie if the assured had become a bankrupt after the assignment[4]

4 **Assignment after loss permissible**—Where once the loss has occurred and the right to indemnity is thereby crystallised, the assured can assign his interest under the policy irrespective of the fact whether he has parted with or lost his interest in the subject-matter insured between loss and assignment This is the combined effect of the proviso to this section, subsection (1) of section 52 and section 17 of the Act

5 **U S A**—In U S A, if transfer is conditional the insured continues to have an insurable interest and can recover[5] The rule supported by the weight of authority is that where the assignment clause is in simple terms the assignee is merely the appointed agent of insured to receive the money and he is bound by any act of insured that would forfeit the policy Even mortgagee's indemnity is subject to risk of every act and neglect of mortgagor which would avoid original policy in mortgagor's hands[7] If notice of change of ownership is required by the policy, such requirement is not dispensed with by a consent to transfer previously obtained[8]

THE PREMIUM

54 Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is no bound to issue the policy until payment or tender of the premium

When premium payable

SYNOPSIS

1 *Scope*
2 *Premium, meaning of*
3 *Return of premium*

1 Scope—This section speaks of the duties of the assured or his agent and of the insurer The assured or his agent is saddled with the duty to pay premium and the insurer with the duty to issue the policy Both the duties are made concurrent, but the insurer is not bound to issue the policy until payment or tender of the premium

1 *North of England Oil Cake Co v Archangel Insurance Co* (1875) L R 10 Q B 249
2 *Hibbert v Carter* (1787) 1 Term Rep 745 *Alston v Campbell* (1779) 4 Bro Parl Cas 476
3 *Fowles v Innes* (1843) 11 M & W 10 *Sparkes v Marshall* (1836) 2 Bing N C 761 774 *Gibson v Winter* (1833) 5 B & Ad 96 where it was held that assignee suing in assignor's name was subject to all rights of defence that could be raised against the assignor
4 *Castelli v Boddington* (1852) 1 E & B 66 affirmed *sub nom Boddington v Castelli* (1853) 1 F & B 879 Ex Ch
5 *Gordon v Massachusetts Fire and Marine Insurance Co* 2 Pick Mass 249
6 *Aetna Insurance Co v Houston Oil and Transport Co* C C A Ex 49 F 2d 121
7 *Eagle Star and British Dominions v Tedlock* D C Cal 22F Supp 545
8 *Edly v Tennessee Marine and Fire Insurance Co* 21 Mo 587

The section corresponds to section 52 of the English Marine Insurance Act, 1906 In considering this section of the English Act, it has been remarked and very rightly, thus "It is not easy to ascertain what effect this provision was intended to have It seems that it cannot have any application to a policy effected at Lloyd's with individual underwriters, as, even if they can be considered as issuing a policy, it is in fact underwritten without any such tender or payment, nor can it apply to any insurance (whether by companies or at Lloyd's) in those cases in which the premium is paid or deemed to have been paid on or before effecting the policy "[1]

2 **Premium, meaning of** —The word "premium" has been defined as "a price paid adequate to the risk "[2] The premium is the price for which the insurer undertakes his liabilities Actual payment of the premium is not necessary to the creation of a complete and binding contract of insurance,[3] and a stipulation that the insurance shall not attach until the premium is paid will not be implied [4]

3. **Return of premium** —See Notes under sections 82—84, *infra*

LOSS AND ABANDONMENT

55 (1) Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against

Included and excluded losses

(2) In particular—

(*a*) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew ,

(*b*) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against ,

(*c*) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils

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1 Halsbury's Laws of England Vol 22, Simonds 3rd Ed , p 41 note (j) *see* also S 33 *ante*

2 *Lucena* v *Crawford* (1806) 2 Bos & P N R 269 301 *per* Lawrence J

3 *See* S 33 *ante*

4 *Kelly* v *London and Staffordshire Fire* (1883) 1 Cab & El 47, 48 *per* Mathew, J

SYNOPSIS

1 *Scope*
2 *Rule of proximity*
3 *Can there be more than one proximate cause ?*
4 *Rule for determining proximate cause*
5 *Right of the assured to recover loss*
6 *Insurer's liability for the loss*
(a) *Ordinary wear and tear*
(b) *Ordinary leakage or breakage*
7 *Burden of proof*
8 *Loss on account of stranding*
9 *Loss by scuttling*
10 *Risks that it is not lawful to cover*
11 *"All risks" policies*
12 *Other clauses in policies—*
(i) *General clause*
(ii) *Inchmaree clause*
(iii) *Collision clause*

1 Scope —This section speaks of loss proximately caused by a peril insured against and loss which is not proximately caused by a peril insured against and fixes the liability or non liability of the insurer for either of such losses It enacts that the insurer is liable, unless the policy otherwise provides, for any loss proximately caused by a peril insured against and exonerates him generally from liability for any loss which is not proximately caused by a peril insured against, and particularly in the following cases

(*i*) where the loss is attributable to the wilful misconduct of the assured,

(*ii*) where the loss is proximately caused by delay,

(*iii*) where the loss is due to ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject matter insured, or

(*iv*) where the loss is proximately caused by rats or vermin, or

(*v*) for loss, due to any injury to machinery not proximately caused by maritime perils

The section corresponds to section 55 of the English Act of 1906

2 Rule of proximity —The time honoured maxim *causa proxima non remota spectatur* is applicable to contracts of marine insurance By the expression "proximate cause" is not meant the latest, *i e*, proximate in time, but the direct, dominant, operative and efficient one[1] If this cause is within the risks covered, the insurers are liable in respect of the loss, if it is within the perils excepted the insurers are not liable[2]

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1 *Becker, Gray v London Assurance* (1918) A C 101 114 *per* Lord Summer (direct) *Leyland v Norwich Union* (1918) A C 350 363 *per* Lord Dunedin (dominant) *ibid per* Lord Shaw at pp 369-370 *Samuel v Dumas* (1924) A C at p 447 *per* Viscount Cave *see also Canada Rice Mills Ltd v Union Marine and General Insurance Co Ltd* (1941) A C 55 P C 91 (1940) 4 All E R 169 178 *per* Lord Wrighton *Pooley Inspection and Insurance Co of Canada v Stevens Williams Co of Canada Ltd* (1951) A C 319 P C *Black Sea and Baltic General Insurance Co Ltd* (1940) A C 997 H L (1940) 3 All E R 405 *Ocean S S Co v Liverpool and London Hull Insurance Association Ltd* (1946) K B 561 C A 575 (1946) 2 All E R 355-364 *per* Scott L J *P Samuel & Co Ltd v Dumas* (1924) A C 431 459 *per* Lord Finlay

2 *Jones v Universal Marine* (1863) 14 C B N S 259 *per* Willis J

In U S A , the doctrine of proximate cause is applied strictly in cases of marine insurance Where there are two or more causes contributing to the production of the loss, the proximate cause is not necessarily the cause nearest in point of time to the loss but it is the efficient, predominating cause of which the loss was the natural and almost inevitable result [1]

Lord Dunedin in *Leyland's case*[2] has observed that a loss may be the combined effect of a whole number of causes, but, for the purposes of insurance law, one direct or dominant cause must in each case be singled out [3]

3 Can there be more than one proximate cause ?—With regard to the question whether there can be more than one proximate cause the opinion is divided One view is that there can be more than one proximate cause [4] The other view is that if there are two causes, one or other of them must be chosen as the proximate one " In Bacon's words, "It were infinite for the law to judge the causes of causes, and their impulsions one of another ; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree " [5] It was strenuously agreed in *Liverpool and London War Risks v Ocean S S Company*[6] that there could be more than one proximate cause of a loss, but the House of Lords gave no support to that submission In the undermentioned cases, *Heskell v Continental Express*[8] and *West Wake Price v Ching*[9] the view of Scott, L J in *Liverpool and London War Risks v Ocean S S Co*[10] supporting the view of the existence of more than one proximate cause, has been criticised The recent accepted view is that there can be only one proximate cause of a loss and even if there be two causes, one or other than must be chosen as the proximate one

But there may, however, be more than one proximate cause of a loss in one sense specially in fire and burglary policies [11] In a simple case, where no exceptions arise, having found a proximate cause covered by the policy, it is unnecessary to look further [12]

4 Rules for determining proximate cause—There are a number of sub-rules deduced from the authorities but it is difficult to apply them These rules are to be applied with caution and commonsense should be the final arbiter in determining what is the proximate cause of a loss It has been observed that "the choice of the real or efficient cause from out of the whole complex of the facts must be made by applying commonsense standards Causation is to be understood as the man in the street and not as either the scientist or the metaphysician would understand it [13] No attempt also seems to have been made in the decided cases to define either the meaning of the substantive "cause" as distinct from "proximate" or the standard by which the relative "dominance' or 'effectiveness" of competing

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1 *Larsen Fruit Steamship & Importing Co v Universal Insurance Co* 302 U S 550 *North west Transport Co v Boston Marine Insr ance Co* C C Mich 41 F 703

2 1918 A C. 350 363

3 (1918) A C 350 at p 363

4 Arnould Marine Insurance S 822 supported in *Board of Trade v Hain* (1929) A C at p 539 *per* Lord Buckmaster *see* also *Reischer v Borwick* (1894) 2 Q B 548 5.0-551, *per* Lrdley L.J *Ocean S S Co v Liverpool and London War Risks* (1940) 1 K I 561, 575 (1940) A C 243 *per* Scott L.J

5 *Leyland v Normal Linen* (1918) A C 350 *per* Lord Dunedin

6 Quoted by Lyles J in *Etard v London Assurance* (1925) 19 C B N S 126 133 (1946) A C 243 252 253

7 (1950) 1 All E R 1033 1048

8 (1957) 1 W L.R 45 49

9 (1946) 1 K B 561 575 (1946) A C 243.

10 See *Re Hockley Hill Jubilee Co* (1920) 1 K.B 257 *Curtis v C Harrop v North British* (1921) A C. 303 P C., *Stanley v Western* (1926) (1911) L.R 3 Ex 71 *Seges and Lawrence v Stevens* 1 K. R. 426

11 *See* cases cited in Article 12 Marine Insurance S 822 and 859

12 *Yorkshire Dale S S Co v Minister of War Transport* (1942) A C 691 700 *per* Wright *see* also *Leyland Shipping Co v Norwich Win ers* (1918) A C. 350-354 *per* Lord Porter

causes to be measured This may perhaps be due to "the Courts ca as metaphysical analysis"[1] Each tribunal of fact must, therefore, d these two matters in the light of commonsense

Certain rules in this connection have been laid down as follows

(*i*) The risk insured against must in fact operate[2] Instances rule ar. (*a*) abandonment of a voyage through fear of capture is by capture[3], (*b*) danger of losing goods by seizure is not loss by nor (*c*) would the unloading of coal to avoid its spontaneous combu loss by fire but where the policy covers loss by fire and other losses, fall within the terms of the policy[5]

(*ii*) Once the risk operates, damage to the subject matter due to check the progress of the casualty, is covered, for the proxim of such damage is the risk insured against[6] The test in such a "Is it a fear of something that will happen in the future or has already happened and is it so imminent that it is immediately to avert the danger by action?"[7] The insurers are liable only in t case[8]

(*iii*) An accident facilitating the loss must be distinguished accident causing the loss Thus, where goods are put under a re princes that facilitates their ultimate seizure, it is the seizure and restraint that is the proximate cause of the loss[9]

(*iv*) **Novus actus interveniens** —This rule is an instance tha cause brought about by human agency is vieing with a cause broug by natural one, the former is the dominant and, therefore, the p cause, since man, by his will, dominates the world[10] In Marine c increase of damage due to the negligence or misconduct of the ass been held not to be proximately caused by the original casualty[11] a ship is run ashore owing to a fire, and goods are landed, pilfera goods by landsmen is a peril of the sea[12] But insurers would not ponsible for a loss due to the assured failing in his implied duty t policy to minimise it and which is referable to his own act or rather than to the peril insured against[13]

(*v*) **The death blow cases** —The converse of the *novus actus* i is the death blow cases which postulate that where a casualty due t agency is followed by natural causes that contribute to the loss, th of causation is broken The principle can be illustrated thus a gave a ship her death-blow, but her final loss was due to a storm, n case it was the torpedo which proximately caused her loss[14]

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1 See *Harrisons Ltd* v *Shipping Controller* (1921) 1 K B 122 131 *per* McCardie J

2 *Actemoff* v *China Traders* (1914) 3 K B 1121 *per* Lord Reading C. J

3 *Becker Gray* v *London Assurance* (1918) A C 101

4 *Moore* v *Evans* (1918) A C 185

5 *The Knight of St Michael* (1893) 14 T L R 191

6 *Stanley* v *Western Insurance* (1868) L R 3 Ex 71 75 *per* Kelly, C. B

7 *Symington* v *Union Insurance of Canton* (1926) 97 L J K B 646 650 *per* Scrutton L. J

8 *See also Glen Falls Insurance* v *Spencer* (1926) 3 D L R (2d) 745 (Can)

9 *Forbs* v *Smith* (1924) 2 K B 2

10 *Liverpool and London War Risk* S S Co (1918) A C 243 Lord Normand

11 *Farmer* v *Barnett* (1825) Ryan 182 ; *Currie* v *Bombay Insura* L R 3 P C 72 , *Land* v *Mitc* 45 T L R 54

12 *Londrell* v *Hemsley* (1816) 149 Gibbs C. J *see also ef St Michael* (1894) 14 T *Lily Taylors* v *Lee s*, (1921) 230 233-234 *per* Scrutton L.

13 *Leyland* v *Norwich Union* (1918)

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5 Right of the assured to recover loss —The right of the assured to recover a loss depends upon the terms of the policy The general rule is that if one of two or more causes is insured against under the policy and none of the others is expressly excluded from it, the assured will be entitled to recover But if one of those causes is excluded from the policy by a warranty and if it be found that the dominant of the causes contributing to the loss is excluded by the warranty, the assured's right to recover is barred The test to find out the proximate cause or the dominant one, in such cases, is—was a peril insured against a proximate cause of the loss ? If so, was a peril excluded by the 'warranty' also a proximate cause of the loss ? If it be so, which of these causes was the more effective or the dominant cause of the loss ?[1] For meaning of loss and misfortune, see *Home Insurance Co* v *Ram Nath and Co*[2]

The assured cannot recover in the following cases

(i) where the subject matter insured becomes damaged by a peril insured against and is totally lost subsequently by an excepted peril before the damage is made good[3], he can recover neither for the damage nor for the total loss

(ii) where the subject-matter insured is lost by an excepted peril and even if it is subsequently destroyed by a peril insured against[4]

But the assured is entitled to recover where there is no question as to an excepting warranty and the loss is proximately caused by a peril insured against although the loss would not have happened but for other events whether those events occurred before or after the peril insured against came into operation[5]

6 Insurer's liability for the loss —As a general rule an insurer is not liable for any loss which is not proximately caused by a peril insured against , and particularly he is not so liable for any loss—

(i) attributable to the wilful misconduct of the assured, it covers the negligence of any other person contributing to the loss[6] With regard to the wilful misconduct of persons other than

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1 *Reischer* v *Borwick* (1894) 2 Q B 548 551 552 *per* Lindley L J *Leyland Shipping Co Ltd* v *Norwich Union Fire Insurance Society Ltd* (1918) A C 350 H L 361 362 *per* Lord Haldane at p 363 *per* Lord Dunedin at pp 365 371 *per* Lord Shaw of Dunfermline *Canada Rice Mills Ltd* v *Union Marine and General Insurance Co* (1941) A C 55 P C (1940) 4 All E R 169 *Athel Line Ltd* v *Liverpool & London War Risks Insurance Association Ltd* (1946) K B 117 C A (1945) 2 All E R 694 *Ocean S S Co* v *Liverpool and London War Risks Insurance Association Ltd* (1946) K B 561 C A (1946) 2 All E R 355 *Boiler Inspection and Insurance Co of Canada* v *Sherwin Williams Co of Canada Ltd* (1951) A C 319 P C

2 (1955) Mad 602

3 *Livie* v *Janson* (1810) East 648

4 *Anderson* v *Morice* (1968) A C 334 H L loss by capture followed by shipwreck but see *Lobitos Oil Fields Ltd* v *Admiralty Commissioners* (1918) 34 T L R 466 D C

5 *Areangelo* v *Thompson* (1811) 2 Camp 620 before the peril insured against came into operation *see also Republic of China China Merchants Steam Navigation Co Ltd and United States of America* v *National Union Fire Insurance Co of Pittsburg Pennsylvania and American International Underwriters Ltd* (1957) 1 Lloyd's Rep 428 443 *Montoya* v *London Assurance Co* (1851) 6 Ex Ch 451 *The Caroline* (1921) 37 T L R 617 *Lind* v *Mitchell* (1928) 98 L J K B 120 C A events occurred after the peril insured against came into operation *see* also the Note under the heading Rules for determining the proximate cause *supra* and the cases cited therein

6 *Thompson* v *Hopper* (1858) E B and L 1038 Ex Ch *Davidson* v *Burnand* (1868) L R 4 C P 117 *Frinder Anderson & Co* v *Thames and Mersey Marine Insurance Co* (1898) 2 Q B 114 C A *A G* v *Adelaide S S Co Ltd* (1923) A C 292 H L *Board of Trade* v *Hain S S Co* (1929) A C 534 H L *M Mohan Lal Kalsa* v *Wood Trading Co* I L R 1 Punj 105 1961 Punj 234

the assured, the insurer is liable for a loss which would not have occurred but for the misconduct of the master or crew or any other person, whether wilful or otherwise, only when such loss is proximately caused by a peril insured against[1] The clause is directed against misconduct only and does not cover cases where the assured properly, and without any fraud or *dolus* on his part, causes the loss in question[2] Thus, where the captain of a vessel set fire to it to prevent it falling into the hands of French privateers, it was held that the loss fell within the fire cover provided by the policy[3]

(ii) Proximately caused by delay, although the delay be caused by a peril insured against[4] The rule in this clause[5] embodies the principle laid down in *Taylor* v *Dunbar*[6] and *Pink* v *Fleming*[7] The latter case is considered in *Schloss Brothers* v *Stevens*[8] where it has been held that an insurance against "all risks by land and by water" covers all losses of an accidental nature of whatever kind

(iii) Due to other causes not proximately caused by maritime perils These causes include ordinary wear and tear, ordinary leakage and breakage, inherent vice, loss proximately caused by rats or vermin or injury to machinery These causes are not due to any fortuitous casualty but are the ordinary results of navigation

(*a*) **Ordinary wear and tear** —The expression includes parting of a rope or cable, splitting of a sail in ordinary weather, damage to the vessel's copper sheathing, the cable and anchor in a place of usual anchorage and in the extraordinary circumstances of wind and weather, decay of, or damage to, masts or spars in the ordinary service of the ship[9]

(*b*) **Ordinary leakage and breakage** —It is only the ordinary leakage and breakage such as usually occurs in every voyage that is excepted but not when it is caused by the violent pitching or labouring of the ship[10] It has been held that the words "to pay average, including the risks of leakage" covers leakage from any cause[11]

(*c*) **Inherent vice or nature of subject matter** —The inherent vice of the subject matter insured means its natural behaviour, being what it is in the circumstances under which it is The risk must be something which happens to it from without[12] Putrescence of meat through decay is an

1 See *Lind* v *Mitchell* (1928) 98 L J K B 120 C A where an owner or master proceeds with his contract voyage in time of war he is not guilty of wilful misconduct simply because there is a risk of capture per Pollock M R *Hentsch* v *Porteous* (1893) 3 All E R 958 but where he knowingly and deliberately runs a risk of capture it is wilful misconduct *Samuel* v *Dumas* (1924) A C 431

2 *Thomas* v *Ilis, &c* (1922) 1 K B & L 1013 Ex Ch *Trinder* v *Thames and Mersey Marine* (1898) 2 Q B 114 C A

3 *Gordon* v *Rimmington* (1807) 1 Camp 123 see also *Lidgett* v *Secretan* (1871) L R 6 C P 616 *Scaramanga* v *Stamp* (1880) 5 C P D 295 C A

4 See Section 55 (2) (*c*)

5 Under clause (b) of subsection (2) of this section

6 (1869) L R 4 C P 206

7 (1876) 25 Q B D 396 C A

8 (1906) 2 K B 665 C A

9 See *Watson Sons & Co* v *Yeates* (*Corp Owners*) (1837) 12 App Cas 503 H L *Atwood* v *Sellar & Co* (1879) 4 Q B D 342 on appeal (1880) 5 Q B D 286 C A *Harrison* v *Universal Marine Insurance Co* (1892) 1 Q B 384 *Strevel* v *New Zealand Insurance Co Ltd* 16 C L R 31 ordinary action of wind and waves

10 *Crofts* v *Marshall* (1837) 7 C and P 597

11 *Traders and Crew Insurance Association Ltd* v *Lindsay and General Insurance Co Ltd* (1921) 37 T L R 91 see also *Powell* v *Insurance Co* v *Dempsey* (1922) 38 L T 433 H L

12 *British Marine* v *Gaussen* (1921) 2 A C 41 57 per Lord Sumner

example of such inherent vice [1] Other examples are when fruit becomes rotten or flour heats, spontaneous combustion generated by some chemical change in the thing insured occurs being put on board in a wet or otherwise damaged condition or damage is caused by inadequate packing of the goods [2] Similarly, insurances of animals do not include death by natural causes [3]

(*d*) Loss proximately caused by rats or vermin Damage to a ship by rats is not covered by a marine policy [4]

(*e*) Any injury to machinery not proximately caused by maritime perils The insurer is not liable for any loss caused by any injury to machinery not proximately caused by maritime perils

7 **Burden of proof** —The burden of proof is upon the assured to show that the loss was proximately caused by a peril insured against [5] But the burden of proof may be displaced by the express terms of the policy and the burden of proof of any particular fact or of its non-existence, may be placed on either party by an agreement made between them [6]

8 **Loss on account of stranding** —Where the ship has stranded, the insurer is liable for the excepted losses although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached, and if the policy be on goods, that the damaged goods are on board [7] A loss by stranding can only take place when the ship, if not on the seas, is at any rate waterborne [8] But a policy against liability for loss of a vessel by "grounding or stranding" does not cover sinking to the ground in deep water [9]

9 **Loss by scuttling** —A loss by scuttling is also not recoverable as "scuttling" does not come within the term "perils of the seas" [10]

10 **Risks that it is not lawful to cover** —Certain risks, such as the capture of an enemy ship by a British vessel, cannot be lawfully insured, and such risks are therefore impliedly excepted from any policy [11]

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1 *Taylor* v *Dunbar* (1869) L R 4 C P 206

2 See *Boyd* v *Dubois* (1811) 3 Camp 133 *F W Berk & Co Ltd* v *Style* (1956) 1 Q B 180 (1955) 3 All E R 625 *Gee and Garnham Ltd* v *Whittall* (1955) 2 Lloyd s Rep 562 *See* also *Sassoon* v *York shire Insurance* (1923) 14 Ll L R 167 affirmed in 16 Ll L R 129

3 *Gregson* v *Gilbert* (1783) 3 Doug K B 232 (mortality of negro slaves) *Tathem* v *Hodgson* (1796) 6 Term Rep 656 *Laurence* v *Aberdein* (1821) 5 B and Ald 107 *Gobay* v *Lloyd* (1825) 3 B and C 793 (mortality of animals) *see* also Arnould on Marine Insurance sections 781 782

4 *Hunter* v *Potts* (1815) 4 Camp 203 but see *Hamilton* v *Pandorf* (1887) 12 App Cas 518 as explained in *Leyland* v *Norwich Union* (1918) A C 350

5 *Austin* v *Drewe* (1816) 6 Taunt 436 *Everett* v *London Assurance* (1865) 19 C B N S 126, *British Marine* v *Gaunt* (1921) 2 A C 41 58 where the assured makes out a *prima facie* case the burden shifts to the insurer if he wishes to show that it was in fact a cause excepted by the policy which proximately caused the loss *Greaves* v *Drysdale* (1935) 53 Ll L R 16

6 *Levy* v *Assicurazioni Generali* (1940) A C 791 approving Scrutton L J *in re Hooley Hill Rubber Co* (1920) 1 K B 257, 273

7 *See* Schedule R 14

8 *Phillips* v *Barter* (1821) 5 B and Ald 161 *Thompson* v *Whitmore* (1810) 3 Taunt 227 citing *Rucraft* v *Dunsmore*

9 *Baker Whiteley Coal Co* v *Marten* (1910) 26 T L R 314

10 *P Samuel & Co Ltd* v *Dumas* (1924) A C 431 H L *see* also *Anglo Iranian* v *Northern Assurance Co Ltd* (1924) 19 Ll L R 255 H L

11 *Brandon* v *Curling* (1803) 4 East 410, *cf Janson* v *Driefontein Mines* (1902) A C 484

11 "All risks" policies —"All risks" policies do not include wear and tear, inherent vice, own act of assured, British capture, or risks that it was not lawful to cover Thus, where wool was insured against "all risks" or "all losses" from the ship's back in Patagonia to warehouses in Europe, it was held that those terms in policy did not include the risks aforementioned and it was found in the case that the wool was badly damaged from an unknown cause and the loss was held to fall within the policy "If the casualty was fortuitous, it needed not to be a calamity"[1] Under an "all risks" transit policy, if it can be *prima facie* proved that the goods were un damaged before transit and arrived damaged, that is sufficient to establish a claim[2] It has also been said that there is no magic in using the term "all risks"—the term may be used to refer to the quantum of loss, in which case it do s not cover all casualties but merely means that the loss will be payable in full whatever its actual amount[3]

12 Other clauses in policies —**(i) General clause** —The general clause, such as "of all other perils, losses and misfortunes, that have or shall come to the hurt, detriment or damage of the said goods and merchan dise and ship, etc , or any part thereof,"[4] does not comprise all perils but includes only perils similar in kind to the perils specifically mentioned in the policy[5] Other losses, such as, salvage charges (S 64), charges under a suing and labour ng clause (S 78), particular charges (S 76), general over age charges and contributions (S 75) have been dealt with in the sections concerned

(ii) Inchmaree clause —The clause owes its name to the steamship 'Inchmaree' whose air chamber of the donkey engine was burst due to wat r being forced up into it through a valve being closed which ought to have been left open, it was held that the damage was not caused by a danger of navigation, or by a peril similar to perils of the seas, because the damage was not of a character to which a marine adventure is specially subject[7]

Under Inchmaree clause the policy covers loss or damage caused by accidents in loading, discharging or shipping cargo or fuel, by explos ons, bursting of boilers, breakage of shafts, or any latent defect in the machinery or hull, contact with aircraft, or by negligence of master, officers, crew or pilots, provided such loss or damage has not resulted from want of due diligence by the assured, owners or pilots, as masters, officers, crew or pilots are not to be considered as part owners within the meaning of the clause should they hold shares in the steamer[8]

(iii) The collision clause —The collision clause applies between the ship insured and another vessel This clause affords no protection to the shipowner against liability when the vessel runs into a dock wall, break water or anything that is not a ship[9]

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1 *British Marine* v *Gaunt* (1921) 2 A C 41
2. *Electro Motion* v *Maritime Insurance* (1956) 1 Lloyds R 1 420 but *see Theodoron* v *Chester* (1951) 1 Lloyds Rep 203 and *Gee & Garnham* v *Whitehill* (1955) 2 Lloyds Rep 562 where inherent vice was alleged
3 *Vincentelli* v *John Lockett & Co* (1911) 105 L T 411 414 *per* Hamilton J
4 *See* Schedule form of policy para 2.
5 *See Cohen* v *Butler* (1811) 5 M & S 461 *Butler* v *Wildman* (1820) 5 B & Ald 398 *The Lapwing* (1910) 45 Com Cas 164 ; 56 S J L R 5 9
6 *See* no es unde Ss 64 73 76 and 78 *post*
7 *Thomas and Mersey Marine Insurance Co* v *Hamilton Fraser & Co* (1887) 12 App C s 484 appl ed in *Stott (Baltic) Steamers Ltd* v *Marten* (1916) 1 A C 304
8 *See* Halsbury s Laws of England Vol 22 S monds 3rd Ed pp 84 85 and cases c ted the e
9 See *Bennett S S Co Ltd* v *Hull Mutual Steamship Protecting Society Ltd* (1913) 3 K B 372 affirmed n (1914) 3 K B 57 C A *see* also *Union Marine Insurance Co* v *Borwick* (1895) 2 Q B 279 *Manchester Ship Canal Co* v *Manchester Racecourse Co* (1900) 2 Ch 352 *Labor Franco* v *Royal Exchange Assurance* (1921) 1 K B 467 where the risks are presly excluded

But a collision between *A*'s tug and *B* or where *A* strikes upon the anchors of *B*, it is a collision within the meaning of the clause [1] This clause usually purports to insure against three-fourths of the damage sustained The liability of the assured depends on whether the acts are of a fortuitous character [2]

Partial and total loss

56 (1) A loss may be either total or partial Any loss other than a total loss, as hereinafter defined, is a partial loss

(2) A total loss may be either an actual total loss, or a constructive total loss

(3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss

(4) Where the assured brings a suit for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss

(6) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial and not total

SYNOPSIS

1 *Scope*
2 *Partial loss, what is*
3 *Right of the assured*

1 Scope—This section classifies losses into two categories, *viz*, (*i*) total loss, and (*ii*) partial loss A total loss has again been sub-divided into two sub-clauses, *viz*, (*a*) actual total loss, and (*b*) constructive total loss This section deals mainly with partial loss while section 57 with actual total loss and section 60 with constructive total loss Although a total loss is sub-divided into sub-clauses as aforesaid but for the purposes of insurance against total loss, it will include both actual total loss and constructive total loss provided a different intention does not appear from the terms of the policy This section defines a partial loss and speaks of its certain incidents

The section corresponds to section 56 of the English Act of 1906

2 Partial loss, what is—Sub-section (1) defines a partial loss to be any loss other than a total loss which is defined in the Act It may be noted that a total loss includes both an actual total loss and a constructive total loss Hence, a partial loss is any loss which is neither an actual total loss as defined in section 57 nor a constructive total loss as defined in section

1 *M Cowan* v *Baine and Johnston The Niobe* (1891) A C 401 *Re Margetts and Ocean Accident and Guarantee Corporation* (1901) 2 K B 792 *Clarkler* v *Hogg* (1868) 1 Q B 32

2 *Furness Withy & Co Ltd* v *Duder* (1920) 2 K B 961 (1916) 2 All E R 119 but *see Hall Brothers S S Co, Ltd* v *Young* (1939) 1 K B 748 : (1939) 1 All E R 609, where it has been held that the act in respect of which damages are payable need not necessarily be a tort *see* also Halsbury's Laws of England Vol 2 p 85 for liability for collision in the absence of collision clause, *see* also *Wake Walker* v *Steamer Gohn Wood Ltd* 1937 P C 215 *American Mail Line Ltd* v *Africa* 1937 P C 168

60 of the Act Moreover sub-section (5) says that where goods are incapable of identification when they reach their destination in specie because of obliteration of marks or otherwise such a loss, if any, will be a partial loss. All the owners of the goods which cannot be identified become tenants-in-common [1]

3 Right of the assured —Sub-section (4) provides that where the assured brings a suit for a total loss and the evidence he adduces in support of his claim proves only a partial loss, he may recover for a partial loss but if there is any terms in the policy he cannot do so

Generally perishable goods are insured "free of average" which means the insurer is not liable for any loss short of a total loss The question of insurers' liability for a total loss arises when the goods are insured free of average, whether the loss would be total or partial within the meaning of the said clause would depend entirely on the general principles regulating the matter, for the clause does not at all change the rules which determine whether a loss is partial or total or whether notice of abandonment need be given to make the insurers liable [2]

Actual total loss

57 (1) Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss

(2) In the case of an actual total loss no notice of abandonment need be given

SYNOPSIS

1 *Scope*
2 *Actual total loss, what is*
3 *Total loss of part of goods*
4 *Actual total loss by deprivation of the subject matter insured*
5 *Notice of abandonment*

1 Scope —This section defines actual total loss and dispenses with notice of abandonment to be given

The section corresponds to section 57 of the English Act of 1906

2 Actual total loss, what is —To satisfy the definition of an actual total loss as given in sub-section (2) either of the two elements must be satisfied, that is to say, (i) the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or (ii) where the assured is irretrievably deprived thereof Hence actual total loss means a loss occasioned to the thing insured in such a way as it is either destroyed or damaged to such extent as to cease to be a thing of the said kind or occasioned to the assured as to be irretrievably deprived of the said thing

Thus, *in the case of a ship* if she had lost her character as a ship and had become a mere congeries of planks, there was an actual total loss of the ship [3] So also where she was so injured that it was not possible for her to sail with-

1 *Spence* v *Union Marine Insurance Co* (1868) L R 3 C P 427

2 *Rose* v *Scheader* (1836) 3 Barg N C 266 278 *see* also *Lawther* v *Flack* (1901) 6 Com Cas 196 C A (case of total loss of disbursements under a policy on disbursements free from all average)

3 *Levy & Co* v *Merchants Marine Insurance Co* (1885) 1 T L R 628 *Cambridge* v *Anderson* (1824) 2 B & C 691 *Somerset* v *Greenock Marine Insurance Co* (1846) 2 M L Cas 150 *Allen* v *Sugrue* (1820) 8 B & C 561

out repairs and could not be taken to a port for that purpose, there was an actual total loss as she had ceased to be ship and could never be used for the purposes of a ship[1], but it would be otherwise if she could be taken to a port and repaired[2]

In the case of goods, if the goods are so damaged that they have lost their original character and exist only in the form of a nuisance, that is an actual total loss even if the goods have reached their port of destination Thus, where hides were insured and they were so damaged as to change their form and could be sold as glue, manure or ushes, there was an actual total loss[3] Similarly, where cement was destroyed by the barge being submerged, there was a total loss of the goods "by total loss of vessel"[4]

3 Total loss of part of goods—As a general rule any amount of damage to the insured goods would not constitute an actual total loss unless there is a total destruction of those goods *in specie* Thus, where wheat valued at £ 1,000 is insured free of average from Waterford to Liverpool and the ship is run aground to prevent her sinking and in consequence her hull is completely under water at every high tide and yet if any portion of the wheat can be got out of the ship and can be sent to Liverpool where the same can be sold as wheat but at a comparatively less price, the assured cannot recover the total loss without giving notice of abandonment[5]

The only exception to the general rule that there is no total loss of the insured goods unless there is a total loss of all the goods,—is where the contract contained in the policy is severable, *i e*, where the goods are separately valued or they are wholly distinct so as to be considered as separately insured[6]

4 Actual total loss by deprivation of the subject matter insured — The second part of the statutory definition of an actual total loss, as has been noticed above, is that there is an actual total loss where the assured is irretrievably deprived of the subject matter insured Thus, where a ship founders in mid-ocean and there is no chance of raising her or the goods on board of her, this constitutes an actual total loss of the ship and goods Similarly, where the subject matter insured is captured, condemned and sold, there is an actual total loss[7]

But a capture without condemnation is not an actual total loss though it may constitute a constructive total loss[8] Similarly, where there is

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1 *Moss* v *Smith* (1850) 9 C B 94, *Barker* v *Janson* (1868) L R 3 C P 303

2 *Barker* v *Janson* *supra* *Fleming* v *Smith* (1848) 1 H L Ca 513 *Knight* v *Faith* (1850) 15 Q B 649 *Martin* v *Krokatt* (1811) 14 East 465 *see* also *Cotes & Co* v *Franklin Fire Insurance Co* 1927 P C 188 (P C)

3 *Rux* v *Salvador* (1836) 3 Bing N C 266 Ex Ch *Asfar & Co* v *Blundell* (1895) 2 Q B 196 affirmed in (1896) 1 Q P 123 C A

4 *Montreal Light Heat and Power Co* v *Sedgwick* (1910) A C 598 (P C) *Mean* *Corcgan* v *London Assurance Co* (1815) 5 M & S 447

5 *And rson* v *Royal Exchange Assurance Co* (1805) 7 East 38 *Cunningham* v *Marine Insurance Co* (1855) 21 P 257 *Fawcett* v *Pearson* (1816) 7 Taun 132, *Wilson* v *Haddon* (1850) 9 C P 57 *Mellows* v *Vaughan* (1797) 1 Park's Marine Insurance 8th Ed p 222, *Mason* v *Lowry* (1776) *Parker's Marine Insurance* 6th Ed p 273 *Glennie* v *London Assurance Co*, (1814) 2 M & S 371

See *Fell* v *Janson* (1865) 5 P L P 422, *Fraser* v *Marryat* (1857) 3 C B N S 724 *Carpenter* 1829 5 B & Ald 556 11 Rev *Lyde* (1826) 2 B N S 225 *Francis* v *Chemiques* v *Lane* (1922) P P 270

Stringer v *English and Scottish Insurance Co* (1869) L R 4 P C 87 (1872) L R 5 Q B 59 C A

Marsterand Fraser Co 1 All E R 158

reasonable chance of raising the ship or goods though only at a great cost, this is not an actual total loss but is only a constructive one [1]

5 Notice of abandonment—Sub-section (2) provides that no notice of abandonment need be given in the case of an actual total loss It is based primarily upon the decision in *Roux* v *Salvador*,[2] where Lord Abinger observed thus "There is an absolute total loss where the thing insured is wholly destroyed or annihilated by the perils insured against or is by the same perils wholly and irretrievably lost to the assured so that it is totally out of his power or that of the underwriter to procure its arrival"[3]

58 Where the ship concerned in the adventure is missing and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed

Missing Ship

SYNOPSIS

1 *Scope*
2 *Presumption of loss taking place*
3 *Reasonable time*
4 *Presumption during war*

1 Scope—This section speaks of presumption of an actual total loss and such presumption can be made where a ship concerned in the adventure is missing and no news of her has been received after the lapse of a reasonable time The presumption contemplated in the section is a rebuttable presumption

The section corresponds to section 58 of the English Act of 1906

2 Presumption of loss taking place—For the assured to recover under the policy, he must prove that the loss has occurred within the insured period as there is no presumption of a loss having occurred at a particular time [4]

3 Reasonable time—What is a reasonable time is a question of fact and to be decided upon the facts and circumstances of each case [5] A loss within the period insured may be presumed (*i*) where the ship has failed to arrive at the port of destination within the ordinary time, or (*ii*) where the ship has met with a disaster or encountered a violent storm during the insured period and has not arrived or been heard of [6]

4 Presumption during war—Where a ship is missing in time of war and she was insured excepting war risks there is a presumption that it was the result of the perils of the sea once the assured has proved the loss [7] But where the policy provides against war risks the onus is on the assured to prove that the loss was caused by these risks [8]

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1 *Cory* v *Burr* 8 App Cas 393 *Rankin* v *Potter* (1873) L R 6 H L 83 *Asfar & Co* v *Blundell* [1896] 1 Q B 123 Ex Ch *Dodds* v *Dodds* (1818) 1 Moo & R 48 *Anderson* v *Morice* (1876) 1 App Cas 713 *Forbes* v *Aberdeen Asylum* (1880) 7 R (H L) 32 Ex Ch

2 (1810) 3 Taunt 430

3 For further discussion on the subject see notes under section 62 *infra*

4 *Hartman* v *Thornton* (1811) Holt N P 294

5 *Sweet* on 877 *infra*

6 *Reid* v *Stanford Marine Assurance Co* (1917) 33 T L R 167

7 *Murray* v *Scott* (1916) 85 L J K B 1601

8 *Empire S S Co Ltd* v *North of England Protecting and Indemnity Association Ltd* (1917) 33 T L R 540

Effect of transhipment etc.

59 Where, by a peril insured against, the voyage is interrupted at intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and re shipping the goods or other movables, or in transhipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transhipment

SYNOPSIS

1 *Scope* 2 *Transhipment*

1 Scope—This section is an exception to the general rule that it is an implied condition in the policy that the ship named therein shall not after the commencement of the risk be changed without necessity or the consent of the insurer The section enacts that notwithstanding the landing or transhipment of the goods or to her movables made on account of interruption of the voyage at an intermediate port or place apart from any special stipulation in the contract of affreightment, the liability of the insurer continues

The section corresponds to section 59 of the English Act of 1906

With regard to the provision of the section under the English Act, Arnould states that the words of the section imply that where the transhipment is made necessary by a peril not insured against, the liability of the insurer does not continue, the provision seems to impose a restriction upon the right to recover on the policy for which before the Marine Insurance Act, 1906,[1] there was no authority[2]

2 Transhipment—Apart from the provision in the section, where a policy provides for transhipment, the goods remain covered by the policy in the course of transhipment and on board the vessel into which they are transhipped, as well[3] But where there is no such provision and the policy provided "all risk of craft until the goods are discharged and safely landed" and the goods were put into lighters at the port of destination, not for the purpose of being landed but for transhipment into vessels bound for another port, the loss of the goods when in such lighters is not covered by the policy for the transhipment in question virtually amounts to the abandonment of the insured voyage[4] By insertion of express words in the policy, its protection may be prolonged after the landing of the goods and during their subsequent transport overland[5]

Constructive total loss defined

60 (1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred

1 6 Edw 7 c 41

2 *See* Arnould on Marine Insurance 14th Ed section 192 approved in Halsbury's Laws of England Vol 22 at p 542 note l

3 *Tierney v Etherington* (1743) cited in Burr at pp 348 349 *Oliverson v Brightman Bold v Rotheram* (1816) 8 Q B 781 *Neale and Wilkinson v Rose* (1898) 3 Com Cas 256 *Belgian Grain and Produce Co Ltd v Cox & Co (France) Ltd* (1919) W N 308 C A Cf *Australian Agricultural Co v Saunders* (1875) L R 10 C P 668 Ex Ch

4 *Hodder v Merchants Marine Insurance Co* (1886) 17 Q B D 354 C A

5 *Kodoonachi v Elliot* (1874) I R 8 C P 648 *Simon Israel & Co v Sedgwick* (1893) 1 Q B 303 C A

(2) In particular, there is a constructive total loss—

(*i*) where the assured is deprived of the possession of his ship or goods by a peril insured against, and

(*a*) it is unlikely that he can recover the ship or goods, as the case may be, or

(*b*) the cost of recovering the ship or goods, as the case may be,

would exceed their value when recovered , or

(*ii*) in the case of damage to a ship, where she is so damaged by a peril insured against, that the cost of repairing the damage would exceed the value of the ship when repaired

In estimating the cost of repairs, no deduction is to be made in respect of general average contribution to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable, if repaired , or

(*iii*) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival

SYNOPSIS

1 *Scope*
2 *Inter relations between sub section (1) and sub-section (2)*
3 *Grounds on which constructive total loss to be based*
4 *Difference between insurance on ship and insurance on goods*
5 *Cost of repairs, estimation of*
6 *In the case of damaged goods*

1 **Scope**—This section defines a constructive total loss and in defining the expression it defines the term in two ways, *viz*, generally and particularly A constructive total loss is defined generally in sub-section (1) while sub-section (2) defines the term particularly where the assured is deprived of the possession of his ship or goods and there is no likelihood of their being recovered or their costs of being recovered would exceed their real value, and also particularly in case of damage to a ship and in case of damage to goods

The general definition given in sub-section (1) makes a loss a constructive total loss where the subject-matter insured is reasonably abandoned (*a*) because of its actual total loss appearing to be unavoidable or (*b*) because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred

Clause (*ii*) of sub-section (2) lays down how the cost of repairs in case of damage to a ship has to be estimated

The section corresponds to section 60 of the English Act of 1906

Is the definition exhaustive ? It has been said that the definition given in the section is exhaustive but it is subject to any express provision made in the policy [1]

2 Inter relations between sub section (1) and sub-section (2) —The two sub-sections do not contain respectively a general rule and illustrations, but rather contain two separate and cumulative definitions, applicable to different circumstances [2] Sub section (2) gives an objective criterion which is not only more precise but is substantially different from that in sub-section (1) [3] Although sub-section (1) states that there is a constructive total loss where the subject matter is reasonably abandoned in the sense given up for lost, constructive total loss is not restricted to cases where there has been such abandonment, [4] as sub-section (2) shows

3 Grounds on which constructive total loss to be based —There are two main grounds on which a constructive total loss may be based First ly, the assured may, by the perils insured against, be deprived of the possession of the insured property in circumstances which make it unlikely that he can recover it within a reasonable time [5] Instances of it may be cited as where it is captured by the enemy, or by the assured's own government or by pirates, [6] or where a ship is deserted by the master and crew [7] Secondly, where the assured has not been so deprived of the property but the property is so damaged by the perils insured against, that the cost of repairing the damage or of carrying the goods to the port of destination may be so great as to make it unjudicious to incur as where the costs would exceed its value [8] A third ground on which a claim for a constructive total loss may be based is frustration of the venture [9]

4 Difference between insurance on ship and insurance on goods — The essential difference between the two kinds of insurances is that in the case of an insurance on ship, the indemnity is against damage to, destruction or loss of the vessel and not against the ship being prevented by perils insured against from arriving at her destination, while in the case of an insurance on goods, the indemnity is not only against damage but also against the goods being prevented by perils of the seas from being carried to the port of destination Hence it follows that a loss of insured voyage does not constitute a total loss of the ship by reason of damage to the ship [10]

5 Cost of repairs, estimation of —To ascertain whether the cost of repairing the damage when caused to a ship would exceed the value of the

1 *Irvin* v *Hine* (1950) 1 K B 555 (1949) 2 All E R 1089

2 *Robertson* v *Petros M Nomikos Ltd* (1939) A C 371 H L (1939) 2 All E R 723 *per* Lord Wright

3 *Richards* v *Forestal Land Timber and Railways Co Ltd* (1942) A C 50 H L (1941) 3 All E R 62 *per* Lord Wright

4 *Robertson* v *Petros M Nomikos Ltd supra per* Lord Porter at p 392

5 *Roura and Forgas* v *Townend* (1919) 1 K B 189 *see* also the cases cited in the fore going note

6 See *Goss* v *Withers* (1758) 2 Burr 683 *Kays* v *Royal Exchange Assurance*, (1897) 2 Q B 135

7 *See* Halsbury s Laws of England 3rd Ed Vol 22 p 150

8 *Moss* v *Smith* (1850) 9 C B 94

9 See *British and Foreign Marine Insurance Co Ltd* v *Samuel Sanday & Co* (1916) 1 A C 650 H L approved in *Rickards* v *Forestal Land Timber and Railways Co Ltd* (1942) A C 52 H L cited *supra see* also *Messrs Saifuddin Mohammad Ibrahim* v *New India Assurance Co Ltd* 51 P L R 184 1949 C P 185

10 *Pole* v *Fitzgerald* (1752) Willes 641 affirmed in (1754) 4 Bro Parl Cas 439 *Parsons* v *Scott* (1810) 2 Taunt 363 *Falkner* v *Ritchie* (1814) 2 M and S 290 *Brown* v *Smith* (1813) 1 Dow 349 H L *Doyle* v *Dallas* (1831) 1 Mood and R 48 *Naylor* v *Taylor* (1829) Dan and LL 240

ship when repaired certain criteria have been given in Cl (*b*) (*ii*) of sub section (2) For the purposes of estimating the cost of repairs the following procedure should be followed (*i*) no deduction is to be made in respect of average contributions to those repairs payable by other interests, but, (*ii*) expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired is to be taken into account

Some decided cases have laid down the criterion for determining the cost of repairs as follows

(*a*) no deduction is to be made of one-third new for old[1],

(*b*) all the repairs must be estimated which are necessary to make good the damage caused by the perils insured against,[2] but—

(*i*) no deduction is to be made from the cost of repair of damage caused by perils of the seas, of the cost of repairs made for the decayed parts of the vessel even when such repair was essential[3], approving the decision in the American case of *Hyde v Louisiana State Insurance Co*[4]

(*ii*) no deduction is to be made of the wages and maintenance of the crew and the cost of insuring the vessel during repairs[5], however account should be taken of the following

(*iii*) fees of surveyors advising what repairs would be necessary and the expenses of taking the vessel to the port and bringing her back to the port of destination (including crew's wages and victualling and voyage insurance),

(*iv*) general average contributions due from the cargo must be deducted when the ship and cargo were solved by the same operation[7]

So also in estimating a ship's repaired value for the purpose of a constructive total loss, the fact that she was at the time of the loss under a peculiarly profitable charter should not be taken into account[8]

6 **In the case of damaged goods**—Any expenses which have to be incurred to enable the goods to be carried to the port of destination of the insured cargo or any part thereof must be taken into account Thus the cost of unshipping the cargo, drying, warehousing and re shipping and the amount of the salvage which may have to be paid in respect of the cargo sealed are included in such expenses[9] But the hypothecation debt and costs paid to the holder of the bottomry bond are not to be taken into consideration in estimating the extent whether total or partial of the loss[10]

61 Where there is a constructive total loss, the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss

Effect of constructive total loss

1 *Henderson Brothers v Shankland & Co* (1898) 1 Q B 328 C A 1 *see* also *Aitchison v Lohre* (1879) 4 App Cas 755 H L. at p 762 *per* Lord Hatherley

2 *Davis v Dallas* (1831) 1 Moody and R 48.

3 *Phillips v Munro* (1847) 4 C B 343

4 (1824) 2 Martin N S 410

5 *Cornes v London and Scottish Insurance Corporation Ltd* (1935) 52 Ll L. R. 34 reversed on other grounds in (1936) 1 K. B 291 C A

6 *Cornes v London and Scottish Insurance Corporation Ltd supra*

7 *Kemp v Halliday* (1866) L R 1 Q B. 559 Ex Ch

8 Arnould on Marine Insurance 14th Ed section 1125

9 *See Lucette v Gurney* (1851) 11 C.B. 176.

10 *Ibid*

SYNOPSIS

1 *Scope*
2 *Assured's right of election*
3 *Insurance against total loss includes constructive total loss*

1 Scope—This section speaks of the rights of the assured in case of constructive total loss and its effect when the assured elects to exercise rights as conferred on him by this section

The section corresponds to section 61 of the English Act of 1906

2 Assured's right of election—The section enacts that in the case a constructive total loss, the assured has the right to elect either to treat e loss as a partial loss or abandon the subject-matter insured to the surer and treat the loss as if it were an actual total loss

The right to abandon is a superimposed right of election where there a constructive loss and is not an essential ingredient of such a loss[1]

Where the assured elects to abandon the subject matter insured to the nsurer, he must, save in certain special cases, give notice of abandonment, otherwise the loss can only be treated as a partial loss[2] Again, where the assured elects to treat the loss as a partial loss,[3] or where he does not give notice of abandonment he has no right to recover for a total loss in respect of the same disaster[4], but his right to so recover is not barred where the loss becomes actually total by the operation of that disaster[5] He can also recover for a total loss in respect of a subsequent disaster Thus, where the insured ship is captured but the assured did not give the requisite notice of abandonment,[6] subsequent thereto the ship is recaptured and lost by the perils of the seas, in such a case the assured has the right to recover for a total loss in respect of the second disaster[7] There may also be cases where a mere prolongation of time during which the assured is deprived of his property may have the effect of reviving the right of abandonment on giving due notice thereof[8]

3 Insurance against total loss includes constructive total loss—*See* Notes under section 56, *ante*

62 (1) Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment If he fails to do so, the loss can only be treated as a partial loss

Notice of abandonment

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1 See *Robertson* v *Petros M* [illegible] (1939) A C. 371 (1938, 2 All [illegible] 723

2 *See* section 62 *infra* and *Wilson Lancashire Co of Toronto* v *Pease* (1 C [illegible]

3 See *Aitchison* v *Lohre* (L [illegible] 755 H L ; *Pitman* v *London Assurance Insurance Co*, (1816) [illegible] *Mellish* v *Andrews* [illegible]

4 *Anderson* v *Lon Equitable Insurance Co* (1905) 7 Ear [illegible]

5 *Mellish* v *Andrews* [illegible] *Stringer* v *English and Scottish Marine* [illegible] *Insurance Co*, (1877) L R 5 C [illegible] *Barker* [illegible] *Forbes* v *Aitken* [illegible] *Ship* [illegible] *Case* [illegible] *Lord* [illegible] *Insurance* [illegible] 22 [illegible] *Insurance* [illegible] *Case* [illegible] *Ed* [illegible] *Case* [illegible] *Mellish* v *Andrews* [illegible] *Insurance* [illegible] *Co*

6 *Case* [illegible] *Insurance* [illegible] *Co* [illegible] *Case* [illegible] *Insurance* [illegible] *Co* [illegible] *Case* [illegible] *Insurance* [illegible] *Co* [illegible]

(2) Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject matter insured unconditionally to the insurer

(3) Notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character, the assured is entitled to a reasonable time to make enquiry

(4) Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment

(5) The acceptance of an abandonment may be either express or implied from the conduct of the insurer The mere silence of the insurer after notice is not an acceptance

(6) Where notice of abandonment is accepted, the abandonment is irrevocable The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice

(7) Notice of abandonment is unnecessary where at the time when the assured received information of the loss, there would be no possibility of benefit to the insurer if notice were given to him

(8) Notice of abandonment may be waived by the insurer

(9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him

SYNOPSIS

1 *Scope*
2 *Notice of abandonment, its form*
3 *Notice when to be given*
4 *Right of the assured where notice properly given*
5 *Acceptance of abandonment, how to be made*
6 *Acceptance and non-acceptance of notice of abandonment, effect of*
7 *Where notice not necessary*

1 **Scope** —The section speaks of notice of abandonment where the assured elects to abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss as provided in the foregoing section 61 To avoid the loss being treated as partial, it is incumbent on the assured to give notice of abandonment as provided in this section The section speaks of incidents of such notice in the several of its sub-sections, such as, whether such notice will be in writing or oral or both, the time within which such notice is to be given, what the notice should contain and the circumstances where such notice need not be given The section also speaks of how the notice of abandonment is to be accepted by the insurer and the effect of such acceptance

The section corresponds to section 62 of the English Act of 1906

2 Notice of abandonment, its form —Sub section (2) provides that notice of abandonment may be given (i) in writing, (ii) by word of mouth, or (iii) partly in writing and partly by word of mouth Regarding the terms of such notice the sub section further provides that they should be sufficient to indicate the intention of the assured that he has abandoned his insured interest in the subject matter insured unconditionally to the insurer Thus where the terms would indicate that the notice is conditional or subject to certain conditions, it is not a valid notice under this section It has also been said that the abandonment must extend to the whole of the interest of the assured in the subject matter at risk at the time of the disaster so far as such interest is covered by the policy Thus, where a policy is framed to cover several insurances, *e g* £1,000 for sugar and £500 for wheat or *vice versa* in the same policy, each interest may be abandoned by separate notice (Marshall on Marine Insurance, 4th Ed , p 486) Again, where a vessel is insured with several insurers, each insurer who accepts the notice of abandonment acquires an interest in the subject matter insured or in its proceeds in the proportion which the amount subscribed by him bears to the full value , and the assured retains a like interest so far as he is not fully insured [1] The question whether the provisions of sub section (2) are fulfilled in any particular case, has to be decided with reference to the facts and circumstances of that case and with relation to the construction to be put on that notice and decided cases will be of little assistance in this respect However, the undermentioned cases may be read with advantage *Cohen, Sons & Co* v *Standard Marine Insurance Co , Ltd* [2], *Russian Bank for Foreign Trade* v *Excess Insurance Co , Ltd* [3], *King* v *Walker* [4], *Thellusson* v *Fletcher* [5], *Currie & Co* v *Bombay Native Insurance Co* [6] disapproving the judgment of Lord Ellenborough, C J in *Parmeter* v *Todhunter* [7]

3 Notice when to be given —Sub-section (3) provides that notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character, the assured is entitled to a reasonable time to make enquiry Thus, where the assured receives information of a loss, such as capture or arrest, he must give notice of abandonment immediately on receipt of such information because the loss in consequence of capture or arrest is, *prima facie*, a constructive total loss [8] But where the information is doubtful, that is, if it be uncertain whether the loss or damage constitutes a *prima facie* constructive total loss, the assured may wait to verify the information or to ascertain the real extent of the loss [9] The question as to what is reasonable diligence is a question of fact [10]

4 Rights of the assured where notice properly given —Sub section (4) provides that where notice of abandonment is properly given and the insurer refuses to accept the abandonment, the rights of the assured are not in any way prejudiced thereby

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1 *See* section 81 *infra* *The Commonwealth* (1907) 23 T L R 420
2 (1925) 30 Com Cas 139
3 (1916) 1 K B 39 C A
4 (1864) 3 H and C 209 Ex Ch
5 (1793) 1 Esp 73
6 (1869) L R 3 P C 72.
7 (1808) 1 Camp 541
8 *Hunt* v *Royal Exchange Assurance* (1810) 5 M. and S 47 *Kellenbach* v *Mackenzie* (1878) 3 C. P D 467, C. A ; *Allewood* v *Henckell* (1795) 1 Parks Marine Insurances 8th Ed p 359 *Aldridge* v *Bell* (1816) 1 Stark 498 *Mullett* v *Skedden* (1811) 13 East 304 , *Mellish* v *Andrews* (1812) 15 East 13 ; *see* also *Currie & Co* v *Bombay Native Insurance Co* (1869) L R 3 P C. 72 *Hudson* v *Harrison* (1821) 3 Brod and Birg 97
9 *Gerrow* v *Royal Exchange Assurance* (1815) 6 Taunt 383 387
10 *See* section 87, *infra*

"It is probable that where notice of abandonment is given but no accepted, the property does not thereby become *res nullius*[1]

5 **Acceptance of abandonment, how to be made**—Sub-section (provides that the acceptance of an abandonment may be either express o it may be implied from the conduct of the insurer but a mere silence o his part after receiving notice is not an acceptance within the meaning o this sub section[2]

6 **Acceptance and non acceptance of notice of abandonment, effect of**—Sub section (6) provides that where notice of abandonment is accepted, the abandonment cannot be revoked, that is, it becomes irrevocable Moreover, such acceptance (*i*) admits liability for the loss, and (*ii*) the sufficiency of the notice[3] But a notice of abandonment given and accepted under a mutual mistake of fact may be a nullity[4]

"If the notice of abandonment is not accepted, it is defeasible, either by the subsequent restoration of the insured property, or by acts showing that the assured has treated the loss as partial and not total"[5] After the receipt of the notice of abandonment, the insurer has no right to claim on salving the subject matter insured, that he has reduced the total loss to a partial one[6] But where he does any act after receipt of such notice justified under a right derived from it an estoppel may arise if he denies that he has accepted the notice[7]

7 **Where notice not necessary**—Sub-sections (7) to (9) lay down where notice of abandonment as required under this section is not necessary Such notice is not necessary in the following cases

(*a*) where at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him[8],

(*b*) where the insurer has waived the notice of abandonment[9],

(*c*) where the insurer has re-insured his risk[10]

Where the assured on receiving information that the ship has been put into a port of repair in a disabled condition expresses his intention to the insurer to abandon but the latter prevails upon him from doing it and orders the repairs to be made at his expense, such conduct of the insurer dispenses with the notice of abandonment and the assured may, without such notice, recover the whole amount of his insurance[11]

The re-assured need not give notice of abandonment in cases of a total loss[12] In case of an actual total loss no notice of abandonment need be given[13]

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1 Halsbury's Laws of England Vol 22 P 1 C citing *Elcro Steamships Ltd* v *Minister of Transport* (1951) 2 K B 965 C A at pp 990 991 *per* Cohen L J approving *Oceanic Steam Navigation Co* v *Evans* (1934) 50 Ll L Rep 1 C A at p 3 *per* Greer L J and doubting the view expressed by Lush J in *Easton Cor poration* v *Fearon Fenwick & Co Ltd* (1923) 28 Com Cas 367

2 See *Smith* v *Felerston* (1814) 2 Dow 474 H L ; *Hudson* v *Harrison* (1824) 3 Brod and Bing 97 ; *Thellusson* v *Fletcher* (1763) 1 Esp 73

3 See *Smith* v *Felerston* (1814) 2 Dow 474 H L

4 *Arnould Law Fire Insurance Society* v *Price Ltd* (1904) A C 4 5 (P C.)

5 Halsbury's Laws of England 3rd Ed Vol 22 p 1 C approved in *Pesquerias y Secaderos de Bacalao de Espana S A* v *Beer* (1949) 82 Ll L. Rep 417 433 reversed on the facts on (1949) 80 Ll L Rep 318 C A (1949) 82 Ll L Rep 501 H L.

6 *Sailing Ship Blairmore Co* v *Macredie* (1898) A C. 593 H L.

7 *Provincial Insurance Co of Canada* v *Leduc* (1874) L R 6 P C. 224 ; *Stokeld* v *Hardenson* (1881) 7 App Cas 49 H L ; but contrast *Robertson* v *Royal Exchange Assurance Corporation* (1935) 5 C. I with *Captain J A Coles Tug and Wharf Co Ltd* v *Franklin Insurance Co* , (1927) A C. 698 P C

8 Sub-sect on (7)

9 Sub sect on (8)

10 Sub section (9)

11 *Le Cocq* v *Amerteam* (1918) 100 L R 219

12 Lovell v *Exeter Marine Insurance Co* (1884) L Q P D 11 C A

13 See sub-section (*a*) of sect on 57 *infra*

63 (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto

Effect of abandonment

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty, and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss

SYNOPSIS

1 *Scope*
2 *Insurer vis-a vis assured on valid abandonment*
3 *Insurer's right upon abandonment of a ship*

1 Scope—This section speaks of the effect of a valid abandonment Its effect is that the insurer steps into the shoes of the assured in whatever may remain of the subject-matter insured, that is to say, the insurer derives the right to deal with the remainder of the subject matter what the assured could have done had not the disaster occurred In the case of the abandonment of a ship, the section clothes the insurer with powers (i) to receive any freight which is either in course of being earned or is earned by the ship subsequent to the casualty causing the loss *minus* the expenses of earning it incurred after the casuality, and in case where the ship is carrying the owner's goods, (ii) to receive a reasonable remuneration for the carriage of those goods subsequent to the casuality causing the loss What will be a reasonable remuneration is a question of fact

The section corresponds to section 63 of the English Act of 1906

2 Insurer vis a vis assured on valid abandonment—The position of the insurer *vis a vis* the assured on a valid abandonment as laid down in sub-section (1) is that the insurer is entitled to take over the interest of the as ured in whatever may remain of the subject matter insured, and all proprietary rights incidental thereto In other words, when once a valid no ice of abandonment is given and accepted in accordance with the foregoing section 62, the assured ceases to be the owner and is released from all liability attaching to his ownership which may have accrued since the loss [1] Similarly, where the insurer on abandonment to him takes over the interest of the assured in the insured ship, he becomes subject to all the liabilities to which the owner would have been except those which accrued before the casualty took place and did not arise from perils insured against [2]

But the question as to whether the insurer is bound to take over the abandoned property when there is a valid notice of abandonment to him although he does not actually accept the notice either expressly or impliedly

1 *Barraclough v Brown* (1896) 1 Com Cas 262 C A affirmed in (1897) A C 615 H L. *Arrow Shipping Co v Tyne Improvement Commissioners The Crystal* (1894) A C. 508 H L. followed in *Boston Corporation v France, Fenwick & Co Ltd*, (1923) 28 Com Cas 367

2 *Sharp v Gladstone* (1805) 7 East 24 *Barclay v Stirling* (1816) 5 M and S 6 *Insurance Co v Hadden* (1884) 13 706 C A

"It is probable that where notice of abandonment is given but not accepted, the property does not thereby become *res nullius*."[1]

5 Acceptance of abandonment, how to be made—Sub-section (5) provides that the acceptance of an abandonment may be either express or it may be implied from the conduct of the insurer but a mere silence on his part after receiving notice is not an acceptance within the meaning of this sub-section.[2]

6 Acceptance and non acceptance of notice of abandonment, effect of—Sub-section (6) provides that where notice of abandonment is accepted, the abandonment cannot be revoked, that is, it becomes irrevocable. Moreover, such acceptance (*i*) admits liability for the loss, and (*ii*) the sufficiency of the notice.[3] But a notice of abandonment given and accepted under a mutual mistake of fact may be a nullity.[4]

"If the notice of abandonment is not accepted, it is defeasible, either by the subsequent restoration of the insured property, or by acts showing that the assured has treated the loss as partial and not total."[5] After the receipt of the notice of abandonment, the insurer has no right to claim, on salving the subject matter insured, that he has reduced the total loss to a partial one.[6] But where he does any act after receipt of such notice justified under a right derived from it an estoppel may arise if he denies that he has accepted the notice.[7]

7 Where notice not necessary—Sub-sections (7) to (9) lay down where notice of abandonment as required under this section is not necessary. Such notice is not necessary in the following cases

(*a*) where at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him[8],

(*b*) where the insurer has waived the notice of abandonment[9],

(*c*) where the insurer has re-insured his risk.[10]

Where the assured on receiving information that the ship has been put into a port of repair in a disabled condition expresses his intention to the insurer to abandon but the latter prevails upon him from doing it and orders the repairs to be made at his expense, such conduct of the insurer dispenses with the notice of abandonment and the assured may, without such notice, recover the whole amount of his insurance.[11]

The re-assured need not give notice of abandonment in cases of a total loss.[12] In case of an actual total loss no notice of abandonment need be given.[13]

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1 Halsbury's Laws of England Vol 22 p 166 citing *Elare Steamships Ltd* v *Minister of Transport* (1951) 2 K B 665 C A at pp 990 991 *per* Cohen L J approving *Oceanic Steam Navigation Co Ltd* v *Evans* (1934) 50 Ll L. Rep 1 C A at p 3 *per* Greer L J and doubting the view expressed by Lush ache J in *Leslon Co poration* v *France Fenwick & Co Ltd* (1923) 28 Com Cas 267

2 See *Smith* v *Felerston* (1814) 2 Dow 474 H L. *Hodson* v *Harrison* (1821) 3 Ford and Barg 97; *Wellsson* v *Fletcher* (1793) 1 Esp 73

3 See *Smith* v *Felerston*, (1814) 2 Dow 474 H L.

4 *Kennet Union Fire Insurers Society* v *Price Ltd* (1934) A C 455 (H C)

5 Halsbury's Laws of England 3rd Ed Vol 22 p 166 approved in *Pesqueras Sesedores de Bonaben de Espana S.A* v *Leer* (1946) 79 Ll L Rep 417 433 reversed on the facts in (1947) 80 Ll L. Rep 318 C A; (1949) 82 Ll L. Rep 501 H L.

6 *Sailing Ship Blairmore Co* v *Macredie* (1898) A C 593 H L.

7 *Provincial Insurance Co of Canada* v *Leduc* (1874) L. R 6 P C. 224; *Shepherd* v *Henderson* (1881) 7 App Cas 49 H L; but contrast *Robertson* v *Royal Exchange Assurance Corporation* (1935) K. C. 346 with *Ceylon Tea Estates Ltd* and *Hoare & Co Ltd* v *Franklin Insurance Co*, (1927) A C. 608 P C

8 Sub-sect on (7)

9 Sub sect on (8)

10 Sub. section (9)

11 *Le Cates* v *Newerlow* (1668) 100 E R 219

12 Lucille v *Fox & Marine Insurers Co* (1899) L. Q P D 11 C A

13 See sub-sect on (*a*) of sect on 57 *infra*

Effect of abandonment

63 (1) Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto

(2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty, and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss

SYNOPSIS

1 *Scope*
2 *Insurer vis-a vis assured on valid abandonment*
3 *Insurer's right upon abandonment of a ship*

1 Scope—This section speaks of the effect of a valid abandonment Its effect is that the insurer steps into the shoes of the assured in whatever may remain of the subject-matter insured, that is to say, the insurer derives the right to deal with the remainder of the subject matter what the assured could have done had not the disaster occurred In the case of the abandonment of a ship, the section clothes the insurer with powers (i) to receive any freight which is either in course of being earned or is earned by the ship subsequent to the casualty causing the loss *minus* the expenses of earning it incurred after the casualty, and in case where the ship is carrying the owner's goods, (ii) to receive a reasonable remuneration for the carriage of those goods subsequent to the casualty causing the loss What will be a reasonable remuneration is a question of fact

The section corresponds to section 63 of the English Act of 1906

2 Insurer vis a vis assured on valid abandonment—The position of the insurer *vis a-vis* the assured on a valid abandonment as laid down in sub-section (1) is that the insurer is entitled to take over the interest of the assured in whatever may remain of the subject matter in question and all proprietary rights incidental thereto In other words, when once a valid notice of abandonment is given and accepted in accordance with the provisions of section 62, the assured ceases to be the owner and is released from all rights attaching to his ownership which may have accrued to the benefit of the insurer Similarly, where the insurer on abandonment to him takes over the interest of the assured in the insured ship, he becomes subject to all the liabilities to which the owner would have been exposed in respect of any accident before the casualty took place and did not arise from perils insured against by the

But the question as to whether the insurer is entitled to take over the abandoned property when there is a valid notice of abandonment and although he does not actually accept the notice or take any action

1 *Barraclough v Brown* (1896) 1 Com Cas 262 C-A affirmed in (1897) A C. 615 H L. *Arrow Shipping Co v Tyne Improvement Commissioners The Crystal* (1894) A C 508 H L followed in *Eastern Counties v France, Fenwick & Co Ltd.*, [1923] 29 Com. Cas 2

2 [illegible]

by his conduct is difficult to answer and there is no direct authority on this point In *Boston Corporation* v *Francis Fenwick & Co, Ltd*[1] it was observed that there was "a good deal to be said" for the view that in such circumstances the wreck becomes *res nullius*[2]

3 Insurer's rights upon abandonment of a ship—Sub-section (2) provides that upon the abandonment of a ship, the insurer is entitled to any freight in course of being earned or is earned by her subsequent to the casualty *minus* the expenses of earning it and where she is carrying the owner's goods, he is entitled to a reasonable remuneration for their carriage subsequent to the casualty But under this sub section, the insurer is not entitled to freight for the carriage of the goods to the place of the casualty[3] Again, where the ship after her abandonment during the voyage succeeds in completing it, the freight earned does not belong to the shipowner nor to the insurer on freight but belongs to the insurer on ship after deducting the expenses of earning it incurred after the casualty[4] But an insurer on freight may be entitled to receive from the shipowner *pro rata* freight paid to him for carriage of the goods to the place of casualty[5]

The insurer on ship is entitled only to the net freight earned by the insured ship But he is not entitled to (i) freight paid in advance by a charterer, or (ii) freight which may be earned by a subsequent ship, or (iii) freight in excess of the bill of lading freight over the chartered freight[6]

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL AVERAGE AND PARTICULAR CHARGES)

Particular average loss

64 (1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss

(2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges Particular charges are not included in particular average

SYNOPSIS

1 *Scope*

2 *Particular average loss, definition and incidents of*

3 *Particular charges, what are*

1 Scope—This section defines a particular average loss and particular charges

The section corresponds to section 64 of the English Act of 1906

1 (1923) 28 Com Cas 367

2 But *see* Notes under heading 'Rights of the assured where notice properly given' under section 62 *supra*

3 *Miller* v *Woolf* H (1857) 8 E. and B 493

4 *Case* v *Davidson* (1816) 5 M and S 79 affirmed in (1820) 2 Brod and Bing 379 Ex.Ch ; *Stewart* v *Greenock Marine Insurance Co* (1848) 2 H L Cas 159 *Sea Insurance Co* v *Hadden* (1884) 13 Q.B D 706 C A *The Red Sea* (1896) P 20 C A

5 *London Assurance Corporation* v *Williams* (1892) 9 T L R 96 affirmed with comment (1893) 9 T L R 257 C. A

6 *See Hickie* v *Rodocanachi* (1859) 28 L. J Ex 273 *The Red Sea* (1896) P 20 C. A

2 Particular average loss, definition and incidents of—Sub-section (1) defines a particular average loss to be any partial loss of the subject-matter insured, caused by peril insured against, and which is not a general average loss Thus, where a part of the goods is lost or where the ship is damaged, by a peril insured against, such loss or damage, when not caused by a general average act so as to constitute a general average loss, is a particular average loss [1] It has also been held that loss of a ship's earnings during detention is not a particular average loss under a policy on ship [2]

3 Particular charges, what are—Sub-section (2) defines "particular charges" to be the expenses incurred by or on behalf of the assured for the safety or preservation of the subject matter insured, other than general average and salvage charges and such charges are not included in particular average Thus, expenses incurred for the preservation or safety either of ship, cargo or freight, and not of the whole property at risk, are particular charges, they are neither general average, nor particular average, nor salvage charges Salvage charges are being dealt with in section 65

Salvage charges

65 (1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils

(2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred

SYNOPSIS

1 *Scope* 2 *"Salvage charges," meaning of*

1 Scope—This section speaks of salvage charges It defines what "salvage charges" mean and enacts that such charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils

The section also corresponds to section 65 of the English Act of 1906

2 "Salvage charges," meaning of—Sub-section (2) defines "salvage charges" to mean the charges recoverable under maritime law by a salvor independently of contract These charges do not include the expenses of services in the nature of salvage rendered by the assured or his agents or by any person employed for hire by them for the purposes of averting a peril insured against Such expenses where properly incurred may be

1 *See Kidston v Empire Insurance Co* (1866) L R 1 C P 535 on appeal (1867) L R 2 C P 357 particular average denotes actual damage done to or loss of part of the subject-matter of the insurance but not any expenses incurred in recovering or preserving the property

2 *Polurrian S S Co Ltd v Young* (1913) 19 Com Cas 143 affirmed in (1915) 1 K B 922 C A , but the point was not dealt with

recovered as "particular charges"[1] or as "a general average loss,"[1] according to the circumstances under which they were incurred The distinction between maritime salvage which is independent of contract, and salvage services rendered under a contract, sometimes and often, becomes one of fine nicety for no one has a right to render salvage services to a ship against the will of the master[3]

General average loss

66 (1) A general average loss is a loss caused by or directly consequential on a general average act It includes a general average expenditure as well as a general average sacrifice

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution

(4) Subject to any express provision in the policy, where the assured has incurred a general average of expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him, and in the case of a general average sacrifice he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties, liable to contribute

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the interest insured, he may recover therefor from the insurer

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of a peril insured against

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those interests were owned by different persons

1 *See* section 64 *supra*
2. *See* section 66 *infra*
3 See *Aitchison* v. *Lohre* (1879) 4 App Cas 755, H L.

SYNOPSIS

1 *Scope*
2 *"General average loss," meaning of*
3 *"General average contribution," meaning of*
4 *Origin of law of general average*
5 *General average expenditure*
6 *General average loss and particular average loss, difference*
7 *"Extraordinary sacrifice or expenditure"*
8 *"Consequential losses"*
9 *Insurer's liability with regard to expenditure, sacrifice and contribution*
10 *Liability where ship and cargo belong to the same person*

1 Scope —The section defines a general average loss and a general average contribution It also provides for the rights of the assured, subject to any express provision in the policy, to recover from the insurer (i) a general average expenditure proportionately of the loss, (ii) the whole of the loss in case of a general average sacrifice, and (iii) a general average contribution in respect of the interest insured where he has paid or is liable to pay such contribution The section also exonerates the insurer, in the absence of any express stipulation, from being liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against It further enacts that in case the assured owns the same interests in any of the two of ship, freight and cargo or in them, the liability of the insurer has to be determined in respect of general average losses or contributions as if those interests were owned by different persons

The section also corresponds to section 66 of the English Act of 1906

2 "General average loss," meaning of —Sub-section (1) defines "a general average loss" to be one caused by or directly consequential on a general average act as defined in sub-section (2) and it also includes a general average expenditure and a general average sacrifice So a general average loss is a general average act which means that where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure It also includes a general average expenditure and a general average sacrifice The expression "in time of peril" means the time when a peril really exists and not that a peril is reasonably believed to exist [1]

3 "General average contribution," meaning of —Sub-section (3) provides that where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such a contribution is called a general average contribution Hence for a general average contribution there must be a general average loss These provisions practically embody the principles laid down by Lawrence, J , in *Birkley* v *Presgrave* [2] and also in the judgments in *Svensden* v *Wallace* [3]

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1 *Joseph Watson & Son Ltd* v *Firemen's Fund Insurance Co of San Francisco* (1922) 2 K B 255

2 (1801) 1 East 220 228

3 (1884) 13 Q B D 69 C A affirmed in (1885) 10 App Cas 404, H L

4 Origin of law of general average—The law of general average owes its origin to the Rhodian laws and was incorporated in the Roman law and then in the common law of England It may now be considered as implied in the contract of affreightment [1]

5 General average expenditure—In Halsbury's Laws of England[2] the subject has been dealt with thus "An expenditure caused by or directly consequential on a general average act is called a general average expenditure, for such expenditure may properly be considered as the cost of the general average act Thus a jettison of goods or the cutting away of a mast in time of peril, in order to save the whole of the property at risk, is a general average sacrifice If at the time of peril salvors are employed at a certain remuneration to salve the whole of the property at risk,[3] without affecting the principle, *sub nom*[4] or if money is paid to pirates for the purpose of saving both ship and cargo, this expenditure constitutes a general average expenditure [5] Again, where a vessel puts into a port of refuge for her own safety and that of the cargo on board of her, the inward expenses including the charges for towage, pilotage, harbour dues, etc, are general average expenditure, inasmuch as they are the direct consequences of the general average act of putting into port [6]

6 General average loss and particular average loss, difference—The essential differences between the two losses are—

(i) in the case of a general average, the loss is voluntarily incurred for the common safety and is made good by a rateable contribution from all the persons concerned in the adventure, but in case of a particular average, the loss is fortuitously caused by a maritime peril and is shared by the person on whom it originally fell[7],

(ii) in case of a general average an expenditure may be of that nature *vis a vis* two or more interests, but in a particular average an expenditure may be *vis a vis* a third interest, it occurs specially in cases where complex salvage operations are involved, namely, where the whole of the expenditure may be incurred for the common safety or part may be incurred for the common safety and part for the benefit of particular interests [8]

7 "Extraordinary sacrifice or expenditure"—It has already been noticed that for a general average act which would amount to a general average loss there must be extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred in time of peril with a view to preserve the property imperilled in the common adventure Thus where a shipowner does any act in performance of his obligation, namely, to give use of his vessel with all her appliances as well as the services of the crew for the

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1 See *Barton v English* (1883) 12 Q B D 218 C A at p 223 and *Wright v Marwood* (1881) 7 Q B D 62 C A *see* also Lowndes and Rudolf's General Average and the York Antwerp Rules 8th Ed

2 (Simonds) Vol 22 p 122.

3 *Ocean S S Co v Anderson* (1883) 13 Q B D 651 C A reversed

4 *Anderson v Ocean S S Co* (1884) 10 App Cas 107 H L *Lyon v Holliday* (1866) L R 1 Q B 520 Ex Ch

5 Marshall on Marine Insurance 5th Ed p 421

6 See *Stevenson v Wallace* (1884) 13 Q B D 69 C A affirmed in (1885) 10 App Cas 404 H L.

7 *Nesbitt v Lushington* (1792) 4 Term Rep 783

8 See *Moran v Jones* (1857) 7 E and B 523 *Kemp v Halliday* (1866) 6 B and S 723, *Job v Langton* (1856) 6 E and B 779 *Royal Mail Steam Packet Co v English Bank of Rio de Janeiro*, (1887) 19 Q B D 362 C A.

entire voyage, he cannot claim any general average contribution But this obligation does not bind the shipowner to expose the ship or her appliances to the risk of loss or damage by using them in a time of emergency for a purpose for which they were not intended He is also bound to make an expenditure which is not only extraordinary in amount but is incurred to procure some service which is extraordinary in its nature[1] Instances of extraordinary sacrifice or expenditure may be cited thus,—(i) where the engines of a steamship are damaged whilst being worked ahead or astern in order to get the ship off a bank[2], or (ii) where spars are cut up to construct a rudder, or sails and cardage are used to stop a leak[3], or (iii) where any part of the ship or her tackle is applied for common safety to some purpose different from its ordinary use[4]

8 **"Consequential losses"**—It has also been noticed that losses which are directly consequential on a general average act are general average losses The instances of such losses are, (i) where holes are cut in the ship to get the goods out to lighten her, or (ii) where water is thrown down a ship's hatches to extinguish an accidental fire[5]

9 **Insurer's liability with regard to expenditure, sacrifice and contribution**—The liability and non-liability of the insurer in respect of general average expenditure as well as general average sacrifice, *i e*, general average loss and general average contribution have been laid down in sub-sections (4), (5) and (6) of this section

Where the assured has incurred a general average expenditure, he is liable, not for the whole of the expenditure but only for the proportion of the loss which falls upon him This rule is subject to any express provision in the policy Rule XVII of the York-Antwerp Rules, 1950 (following English Maritime law) provides that the contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure Hence for property which has been destroyed or become valueless before the termination of the adventure, he cannot be made liable to contribute in general average[6] The same principle also applies between assured and insurer[7] Where the amount of contribution recoverable by a shipowner from a cargo owner is reduced by reason of the loss of or damage to the cargo before the termination of the adventure, the deficiency in the cargo's contributory value represents part of the "proportion of the loss which falls upon" the shipowner within the meaning of sub-section (4) of this section and is recoverable as such from the hull underwriters[8] But in the case of general average sacrifice the insurer is liable for the whole amount of the loss and he is subrogated to the rights of the assured in respect of his right of contribution from other parties to contribute[9] Again, in the case of general average expenditure as for instance in case of putting into a port of refuge, the [illegible] recover the whole of such expenditure but can recover only [illegible] he himself has to bear in respect of his own interest as [illegible][10]

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1 *Robinson* v *Price* (1877) 2 Q B D 91 on appeal 2 Q B D 295 C A (use of spars as fuel)

2 *The Bona* (1895) P 125 C A

3 *Harrison* v *Bank of Australasia* (1872) L R 7 Ex Ch 39 *Robinson* v *Price* (1877) 2 Q B D 91 on appeal 2 Q B D 295 C A Phillips Law of Insurance 5th Ed section 1299

4 *Birkley* v *Presgrave* (1801) 1 East 220

5 *Wilde Cross Wire Co* v *Savill* (1882) 8 Q B D 653 C A *The Birkhall Pozzani and Jeronica* v *Grayshan S S Co Ltd*, (1896) 1 Com Cas 448

6 *Chellew* v *Royal Commission on Sugar Supply* (1922) 1 K B 12 C A

7 *Green Star Shipping Co Ltd* v *London Assurance* (1) [illegible]

8 *Orient Mercantile Co Ltd* v *London Assurance* [illegible]

9 *See Dickinson* v *Jardine* (1868) L R 3 C P [illegible] the case of [illegible] the shipowner can [illegible] the assured of the loss in respect of [illegible] of contribution [illegible] to the underwriter

10 *The Mary Thomas*, [illegible]

4 Origin of law of general average —The law of general average owes its origin to the Rhodian laws and was incorporated in the Roman law and then in the common law of England It may now be considered as implied in the contract of affreightment [1]

5 General average expenditure —In Halsbury's Laws of England,[2] the subject has been dealt with thus "An expenditure caused by or directly consequential on a general average act is called a general average expenditure, for such expenditure may properly be considered as the cost of a general average act Thus a jettison of goods or the cutting away of a mast in time of peril, in order to save the whole of the property at risk, is a general average sacrifice If at the time of peril salvors are employed at a certain remuneration to salve the whole of the property at risk,[3] without affecting the principle, *sub nom*[4] or if money is paid to pirates for the purpose of saving both ship and cargo, this expenditure constitutes a general average expenditure [5] Again, where a vessel puts into a port of refuge for her own safety and that of the cargo on board of her the inward expenses including the charges for towage, pilotage, harbour dues, etc, are general average expenditure, inasmuch as they are the direct consequences of the general average act of putting into port "

6 General average loss and particular average loss, difference —The essential differences between the two losses are—

(i) in the case of a general average, the loss is voluntarily incurred for the common safety and is made good by a rateable contribution from all the persons concerned in the adventure, but in case of a particular average, the loss is fortuitously caused by a maritime peril and is shared by the person on whom it originally fell[7],

(ii) in case of a general average an expenditure may be of that nature *vis a vis* two or more interests, but in a particular average an expenditure may be *vis a vis* a third interest, it occurs specially in cases where complex salvage operations are involved, namely, where the whole of the expenditure may be incurred for the common safety or part may be incurred for the common safety and part for the benefit of particular interests [8]

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1 See *Burton* v *English* (1883) 12 Q B D 218 C A at p 223 and *Wright* v *Mumford* (1881) 7 Q B D 62 C A *see* also Lowndes and Rudolf's General Average and the York Antwerp Rules 8th Ed

2 (Simonds) Vol 22 p 122

3 *Ocean S S Co* v *Anderson* (1883) 13 Q B D 651 C A reversed

4 *Anderson* v *Ocean S S Co* (1884) 10 App Cas 107 H L *Aitken* v *Wilkie* (1890) L R 1 Q B 529 Ex Ch

5 Marshall on Marine Insurance 4th Ed p 424

6 See *Svensden* v *Wallace* (1884) 13 Q B D 69 C A affirmed in (1885) 10 App Cas 404 H L

7 *Nesbitt* v *Lushington* (1792) 4 Term Rep 783

8 See *Moran* v *Jones* (1857) 7 E and B 523 *Kemp* v *Halliday* (1866) 6 B and S 723 *Job* v *Langton* (1856) 6 E and B 779 *Royal Mail Steam Packet Co* v *English Bank of Rio de Janeiro* (1887) 19 Q B D 362 C A

entire voyage, he cannot claim any general average contribution But this obligation does not bind the shipowner to expose the ship or her appliances to the risk of loss or damage by using them in a time of emergency for a purpose for which they were not intended He is also bound to make an expenditure which is not only extraordinary in amount but is incurred to procure some service which is extraordinary in its nature[1] Instances of extraordinary sacrifice or expenditure may be cited thus,—(i) where the engines of a steamship are damaged whilst being worked ahead or astern in order to get the ship off a bank[2], or (ii) where spars are cut up to construct a rudder, or sails and cardage are used to stop a leak[3], or (iii) where any part of the ship or her tackle is applied for common safety to some purpose different from its ordinary use[4]

8 **"Consequential losses"**—It has also been noticed that losses which are directly consequential on a general average act are general average losses The instances of such losses are, (i) where holes are cut in the ship to get the goods out to lighten her, or (ii) where water is thrown down a ship's hatches to extinguish an accidental fire[5]

9 **Insurer's liability with regard to expenditure, sacrifice and contribution**—The liability and non-liability of the insurer in respect of general average expenditure as well as general average sacrifice, *i e*, general average loss and general average contribution have been laid down in sub-sections (4), (5) and (6) of this section

Where the assured has incurred a general average expenditure, he is liable, not for the whole of the expenditure but only for the proportion of the loss which falls upon him This rule is subject to any express provision in the policy Rule XVII of the York-Antwerp Rules, 1950 (following English Maritime law) provides that the contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure Hence for property which has been destroyed or become valueless before the termination of the adventure, he cannot be made liable to contribute in general average[6] The same principle also applies between assured and insurer[7] Where the amount of contribution recoverable by a shipowner from a cargo owner is reduced by reason of the loss of or damage to the cargo before the termination of the adventure, the deficiency in the cargo's contributory value represents part of the "proportion of the loss which falls upon" the shipowner within the meaning of sub-section (4) of this section and is recoverable as such from the hull underwriters[8] But in the case of general average sacrifice the insurer is liable for the whole amount of the loss and he is subrogated to the rights of the assured in respect of his right of contribution from other parties liable to contribute[9] Again, in the case of general average expenditure, as for instance in case of putting into a port of refuge, the shipowner cannot recover the whole of such expenditure but can recover only that part which he himself has to bear in respect of his own interest as shipowner[10]

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1 *Robinson* v *Price* (1877) 2 Q B D 91 on appeal 2 Q B D 295 C A (use of spars as fuel)

2 *The Bona* (1895) P 125 C A

3 *Harrison* v *Bank of Australasia* (1872) L R 7 Ex Ch 39 *Robinson* v *Price* (1877) 2 Q B D 91 on appeal 2 Q B D 295 C A Phillips Law of Insurance 5th Ed, section 1299

4 *Burley* v *Pressgrave* (1801) 1 East 220

5 *White Cross Wire Co* v *Savill* (1882) 8 Q B D 653 C A *The Burkhall Pandyans and Jeronica* v *Grampian S S Co Ltd* (1896) 1 Com Cas 446

6 *Chellew* v *Royal Commission on Sugar Supply* (1922) 1 K B 12 C A

7 *Green Star Shipping Co Ltd* v *London Assurance* (1933) 1 K B 378

8 *Green Star Shipping Co Ltd* v *London Assurance* supra

9 See *Dickenson* v *Jardine* (1868) L R 3 C P 639 the case illustrates that the owner of goods and the shipowner can recover the full amount of the loss in cases of jettison of goods or of cutting away of a from the underwriter

10 *The Mary Thomas* (1894) P 108 C

The insurer is also liable to the assured for a general average contribution in respect of the interest insured, where the latter has paid or is liable to pay the said contribution This rule is also subject to any express provision in the policy[1] Thus, where the goods are jettisoned and the shipowner has to pay a general average contribution, he can recover the same from his insurer But the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding or in connection with the avoidance of a peril insured against The rule is subject to any express stipulation being absent[2] It has already been seen that to attract the provisions of this rule, the peril must really exist and not that the person incurring the loss reasonably believed that the peril existed[3] See also Notes under section 73 *infra* as to the amount for which insurers are liable in respect of general average

10 Liability where ship and cargo belong to the same person — Sub-section (7) provides that where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those interests were owned by different persons The provisions in this sub-section embody the law laid down in *Montgomery & Co v Indemnity Mutual Marine Insurance Co*[4] In this case it has been said that where ship and cargo belong to the same person and the thing sacrificed is part of the ship, the assured can sue the underwriter on ship only for the ship's proportion of the loss and the underwriter on cargo is liable to indemnify him against so much of the loss as is properly attributable to cargo

MEASURE OF INDEMNITY

Extent of liability of insurer for loss

67 (1) The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy

SYNOPSIS

1 *Scope*
2 *"Measure of indemnity" meaning of*
3 *Liability of the insurer*

1 Scope —The section in enacting the extent of the insurer's liability for loss has defined in sub-section (1) the expression "measure of indemnity", and has prescribed the method in sub-section (2) by which such measure of indemnity can be fixed in respect both of a valued policy and an unvalued

1 *See* sub-section (5) of this section
2 *See* sub-section (6) of this section
3 *Joseph Watson & Sons Ltd v Firemen's Fund Insurance Co of San Francisco* (1902) 2 K. B 355 cited *supra*
4 (1902) 1 K. B 734 C A

one In case of an unvalued policy, the measure of indemnity has reference to the insurable value of the thing insured [1]

The section corresponds to section 67 of the English Act of 1906

2 **"Measure of indemnity," meaning of** —The "measure of indemnity" as defined in sub-section (1) is the sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy, to the full extent of the value fixed by the policy

3 **Liability of the insurer** —Sub section (2) fixes the liability of the insurer, or each insurer if there be more than one, where there is a loss recoverable under the policy, to such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in case of a valued policy and to such proportion of the measure of indemnity as the amount of his subscription bears to the insurable value in the case of an unvalued policy

The rule stated above may be illustrated by the following formula

Insurer's liability— $\frac{S}{V} \times m$, where 'S' be the amount subscribed by any one insurer, 'V' be the value fixed by the policy in the case of a valued policy, or the insurable value in the case of an unvalued policy and 'm' be the measure of indemnity, that is, the amount of any loss recoverable under a policy in which the assured is fully insured Thus, where 'S'=Rs 100, 'V' = Rs 10,000 and 'm' Rs 500, by applying the above formula, the insurer's liability $= \frac{100}{10{,}000} \times 500 =$ Rs 5 only [2]

The loss recoverable from any underwriter depends entirely upon the measure of indemnity as stated above

Total loss

68 Subject to the provisions of this Act, and to any express provision in the policy, where there is a total loss of the subject-matter insured—

(1) if the policy be a valued policy, the measure of indemnity is the sum fixed by the policy ,

(2) if the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured

SYNOPSIS

1 *Scope* 2 *Total loss*

1 **Scope** —This section speaks of measure of indemnity in case of a valued as well as of an unvalued policy, where there is a total loss of the subject matter insured

The section corresponds to section 68 of the English Act of 1906

1 § For measure of insurable value *see* Notes under section 18, *infra*
2. Halsbury's Laws of England, 3rd Ed , Vol 22, p 135

2 **Total loss**—From what has been stated in section 67, it follows that when there is a total loss of the subject-matter insured, the measure of indemnity in the case of a valued policy is the sum fixed by the policy and such indemnity in the case of an unvalued policy is the insurable value of the subject-matter insured This rule was applied in *Woodside* v *Globe Marine Insurance Co*,[1] even though the ship had already sustained constructive total loss when the peril insured against occurred [2]

Partial loss of ship

69 When a ship is damaged, but is not totally lost, the measure of indemnity subject to any express provision in the policy, is as follows

(1) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty

(2) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above,

(3) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above

(4) Where the ship has not been repaired, and has been sold in her damaged state during the risk, the assured is entitled to be indemnfied for the reasonable cost of repairing the damage, computed as above, but not exceeding the depreciation in value as ascertained by the sale

SYNOPSIS

1 *Scope*
2 *Ship repaired, measure of indemnity*
3 *Customary deductions*
4 *Ship partially repaired, measure of indemnity*
5 *Ship neither repaired nor sold in her damaged state*
6 *Ship not repaired but sold in her damaged state*

1 **Scope**—This section speaks of the measure of indemnity when a ship is damaged but is not totally lost, *i e* where there is a partial loss of the ship In its four clauses it lays down four different criteria for the measure of indemnity such as (*i*) where the ship has been repaired, (*ii*) where sh has been partially repaired (*iii*) where she has not been repaired and not sold in her damaged state during the risk, and (*iv*) where she has not been repaired but has been sold in her damaged state during the risk

1 (1896) 1 Q B 105 C P 616 *Berker* v *Jensen* (1868) L R 3 C P 303
2 *See* also *Liddell* v *Secretan* (1871) L R 6

The section corresponds to section 69 of the English Act of 1906

2 Ship repaired, measure of indemnity—The measure of indemnity, where the ship has been repaired, is the cost of repairs *minus* the customary deductions which must not exceed the sum insured in respect of any one casualty

3 Customary deductions—One of the customary deductions is to deduct one-third from the whole expense, both of labour and materials which the repairs have cost provided the ship is not a new one Such deduction is known as "deducting one-third new for old" Such deduction is made on the ground that the repairs will generally convert the ship a better and valuable one than she was before her damage[1] If the damage can only be proved to fall mainly on the new part that this deduction of one-third new for old appears to apply[2], but this deduction will not apply where an old ship is newly repaired immediately before sailing on the voyage on which the loss takes place and it falls exclusively on the new materials[3]

4 Ship partially repaired, measure of indemnity—The measure of indemnity, where the ship has been only partially repaired, is the reasonable cost of such repairs less the customary deductions not exceeding the sum insured in respect of any one casualty *plus* the reasonable depreciation, if any, arising from the unrepaired damage, the aggregate amount not exceeding the cost of repairing the whole damage

5 Ship neither repaired nor sold in her damaged state—The measure of indemnity, where the ship has neither been repaired nor sold in her damaged state during the risk, is the reasonable depreciation arising from the unrepaired damage not exceeding the reasonable cost of repairing such damage as computed in case where the ship is repaired[4]

No rule has been formulated as to how depreciation can be calculated for the purposes of Cl (5) Some probable tests have been laid down They are (i) the difference between the conventional value and the true damaged value, and (ii) the figure resulting from the application to the conventional value of the proportion of actual depreciation[5] The second method is similar to that prescribed for the case of damaged goods and was applied in *The Armar*[6]

In case where repairs could not possibly be done before a certain date, the cost of repairs for the purposes of this clause is the figure appropriate to that date[7]

6 Ship not repaired but sold in her damaged state—The measure of indemnity, where the ship has not been repaired and has been sold in her damaged state during the risk, is the reasonable cost of repairing the

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1 See *Aitchison v Lohre* (1879) 4 App Cas 755 H L, *per* Lord Blackburn

2 *Poingdestre v Royal Exchange Assurance Corporation* (1826) Ry and M 378

3 *See* Stevens Essay on Average in Marine Insurance 172 cited in Halsbury's Laws of England Vol 22 Simonds 3rd Ed p 138 f n (5) *see* also Arnould on Marine Insurance 14th Ed section 1030 and *Ross to v Gurney* (1851) 11 C B 176 *De Costa v Newnham* (1788) 2 Term Rep 407 *Humphreys v Union Insurance Co* (1824) 3 Mason 429 (American) where shipowner was in default

4 *See* Note under heading 'Ship repaired measure of indemnity' above

5 See *Irvin v Hine* (1950) 1 K B 555 ; (1949) 2 All E R 1083 in which the point was left open

6 (1954) 2 Lloyd's Rep 95 a decision of the New York Supreme Court ; cf *Thomson* (1949) 2 K B 755 ; E R 381 (fire insurance)

7 *Irvin v Hine, supra*

damage as such repairs are computed as stated above which must not exceed the depreciation in value as ascertained by the sale

In *Pitman* v *Universal Marine Insurance Co*, a majority of the Court of Appeal decided that where the ship after sustaining an average loss was sold by her owner without repair, the owner was entitled to recover the estimated cost of repairs, less the usual deduction, not exceeding the depreciation in value of the vessel But Brett, L J dissenting, was of the view that the estimated cost of repairs was in all cases the measure of the loss [1]

Partial loss of freight

70 Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy

SYNOPSIS

1 *Scope*

2 *Partial loss of freight, measure of indemnity*

1 Scope—This section prescribes the measure of indemnity where there is a partial loss of freight both in cases of valued and unvalued policies

The section corresponds to section 70 of the English Act of 1906

2 Partial loss of freight, measure of indemnity—The measure of indemnity, where there is a partial loss of freight, (*a*) in the case of a valued policy, is such proportion of the sum fixed by the policy, and (*b*) in the case of an unvalued policy, of the insurable value, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy But this rule is subject to any express provision in the policy

Indeed it is only the net freight that is really lost by the assured but it has already been seen that insurable value, in insurance on freight, is the gross freight at the risk of the assured *plus* the charges of insurance [2]

In valued policies, where only part of the whole cargo to which the valuation was intended to apply was on board or contracted for at the time of the loss, the insurer is liable only to pay on such proportion of the amount insured as the part of the cargo on board, or contracted for, bears to the full intended cargo [3] In an unvalued policy, where only part of the cargo is on board or contracted for at the time of the loss, and that part is totally lost, the insurer is liable only to pay the actual amount of freight which would have been earned by the carriage of that part, together with premiums and cost of insurance [4]

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1 (1887) 9 Q B D 192 C A *see* also *Bristol Steam Navigation Co* v *Indemnity Mutual Marine Insurance Co* (1887) 6 Asp M L C 173

2 *See* sub-section (2) of section 18 *supra*

3 *Forbes* v *Aspinall* (1811) 13 East 323 *Dresser* v *Home and Colonial Assurance Co* (1872) L R 7 C P 341 *The Mona* (1894) 10 T L R 242 *cf Tobin* v *Harford* (1864) 17 C B N S 528 Ex Ch *policy on cargo*

4 *Forbes* v *Cowie* (1809) 1 Camp 520 *Forbes* v *Aspinall* (1811) 13 East 323

71 Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows

Partial loss of goods merchandise, etc.

(1) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy,

(2) where part of the goods, merchandise or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss,

(3) where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value,

(4) "Gross value" means the wholesale price, or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand, provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers

SYNOPSIS

1 *Scope*

2 *Total loss of part of goods, etc, insured by a valued policy, measure of indemnity*

3 *Total loss of part of goods, etc, insured by an unvalued policy, measure of indemnity*

4 *Whole or part of the goods or merchandise insured, delivered, damaged at its destination, measure of indemnity*

5 *"Sound value"*

6 *"Damaged value"*

7 *"Gross value" and "gross proceeds"*

8 *Cases where insurer is not liable*

1 Scope—This section prescribes the measure of indemnity where there is a partial loss of goods, merchandise or other movables In its clauses (1) to (3) it lays down three different criteria for the measure of indemnity, such as, (i) where part of the goods, merchandise or other movables insured by a valued policy is totally lost, (ii) where part of the goods, other movables insured by an unvalued policy is totally lost, and the whole or any part of the goods or merchandise insured has been damaged at its destination

In sub-clause (4) it also defines "gross value" and "gross proceeds"

The section corresponds to section 71 of the English Act of 1906

2 **Total loss of part of goods, etc, insured by a valued policy, measure of indemnity**—Clause (1) of the section prescribes the measure of indemnity where part of the goods, merchandise or other movables insured by a valued policy is totally lost Such measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy[1] This rule is subject to any express provision in the policy

3 **Total loss of part of goods, etc, insured by an unvalued policy, measure of indemnity**—Clause (2) of the section prescribes the measure of indemnity where part of the goods, merchandise or other movables insured by an unvalued policy, is totally lost Such measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss[2] This rule is subject to any express provision in the policy

4 **Whole or part of the goods or merchandise insured, delivered damaged at its destination, measure of indemnity**—Clause (3) of the section prescribes the measure of indemnity where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination Such measure of indemnity is such proportion of the sum fixed by the policy as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value, in the case of a valued policy, and the measure of indemnity is such proportion of the insurable value as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value in the case of an unvalued policy Hence to ascertain the measure of indemnity, it is necessary to know the difference in meaning between the expressions used, *viz*, "sound value," "damaged value", "gross value" and "gross proceeds"

5 **"Sound value"**—The "sound value" is the current price for sound articles of the same goods as the damaged one in the market if they are sold

6 **"Damaged value"**—The "damaged value" is the gross amount which the goods would fetch if they are sold by public auction in damaged condition

The difference between the damaged and sound values arrived at in the manner described in clause (3), truly determines the depreciation of the goods caused by the damage, and is entirely independent of the rise or fall of the market value of the goods[3] Where before sale the damaged goods are conditioned, it is the value of the conditioned goods and not that of the goods less the cost of conditioning which is to be compared with the sound value in order to ascertain the proportion of loss, because the cost of conditioning is recoverable under the 'suing and labouring' clause[4]

7 **"Gross value" and "Gross proceeds"**—"Gross value" has been defined in clause (4) of the section to mean the wholesale price, or, if there be no such price, the estimated value, calculated, in either case, on the

1 See *Lewis* v *Rucker* (1761) 2 Burr 1167
2 *See* Notes under section 68 *supra*
3 See *Lewis* v *Rucker* (1761) 2 Burr 1167 *Jhonson* v *Sheddon* (1802) 2 East 581
4 *Francis* v *Boulton* (1895) 65 L J Q B 153 for suing and labouring clause see section 78, *infra*

assumption that freight, landing charges and duty have been paid beforehand, but where the goods are such as are customarily sold in bond, the bonded price is deemed to be the gross value

In the same clause "gross proceeds" has been defined to mean the actual price obtained at a sale where all charges on sale are paid by the sellers

The extent of depreciation, measured by the proportion which the difference between the gross sound and gross damaged values at the place of arrival bears to the gross sound value, may be conveniently called the "percentage of loss" The measure of indemnity turns round this "percentage of loss" which sum is fixed by the policy in the case of a valued policy and the percentage of loss of the insurable value in the case of an unvalued policy

It may be shown that the insurer is liable to pay in respect of goods arriving in a damaged condition the same percentage of the amount actually subscribed by him whether the policy is a valued or an unvalued one This can be shown by the formula $\frac{r}{100} \times V \times \frac{S}{V}$ or $\frac{r}{100} \times S =$ the liability of the insurer, where r stands for the percentage of loss per cent, V, for the agreed value, and S, for the amount subscribed by the insurer [1]

8 **Cases where insurer is not liable**—Where only a few articles or pieces in each package, out of a number of packages of goods insured, arrive damaged and the sound and damaged goods are sold together at the same auction and in consequence the sound part of the package may sell at a diminished value because of the assortment being broken and a loss occurs, the insurer is not liable for such loss [2], neither he is liable for the cost of examining such goods as prove to be undamaged [3]

Apportionment of valuation

72 (1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act

(2) Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods

SYNOPSIS

1 *Scope*

2 *Apportionment of valuation, how to be made*

1 Cf *Irvin* v *Hine* (1950) 1 K B 555; (1949) 2 All E R 1089 cited *supra*

2 *Cater* v *Great West Insurance Co of New York* (1873) L R 8 C P 552, *J Lysaght Ltd* v *Coleman* (1895) 1 Q B 49 C A, *Brown Brothers* v *Fleming* (1902) 7 Com Cas 245

3 *J Lysaght Ltd* v *Coleman* *supra*

1 Scope —The section speaks of apportionment of valuation where different species of property are insured under a single valuation It lays down the principle how this apportionment should be made

The section corresponds to section 72 of the English Act of 1906

2 Apportionment of valuation, how to be made —Sub-section (1) lays down the general method of apportioning the valuation where different species of property are insured under a single valuation Such valuation has to be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy The insured value of any part of a species in such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act [1]

Sub-section (2) provides that where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities or descriptions of goods [2]

General average contributions and salvage charges

73 (1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution if the subject matter liable to contribution is insured for its full contributory value, but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be deduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a reduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute

(2) Where the insurer is liable for salvage charges the extent of his liabilities must be determined on the like principle

SYNOPSIS

1 *Scope* 2 *Measure of indemnity for general average and salvage charges*

1 Scope —This section lays down the principle by which the indemnity payable by the insurer is ascer It prescribes how the indemnity is to be measured in cases of gener ion, particular average loss and where the for its full contributory value The sec be determined in c 's liabil

The section Act

1 For the Notes
2 For

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selves and hence he can expressly insure against the liability he may become liable to the owner for loss[1]

General provisions as to measure of an indemnity

75 (1) Where there has been a loss in respect of any subject matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case

(2) Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy.

SYNOPSIS

1 *Scope*
2 *Measure of indemnity in other cases*
3 *Measure of indemnity not to affect the rules relating to double insurance*
4 *Insurer's right*

1 Scope —The section prescribes the general provisions as to measure of indemnity which has not been expressly provided in the foregoing sections It also saves the rules relating to double insurance being affected by the rules of measure of indemnity provided in this Act It also confers right on the insurer to contest the measure of indemnity by disproving the interest wholly or in part or by showing that the subject matter insured was not at risk under the policy at the time of the loss

The section corresponds to section 75 of the English Act of 1906

2 Measure of indemnity in other cases —Sub-section (1) provides that where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions (*i e*, sections 67 to 74) the measure of indemnity is to be ascertained, as nearly as may be, in accordance with those provisions in so far as applicable to the particular case

3 Measure of indemnity not to affect the rules relating to double insurance —Sub-section (2) provides, *inter alia*, that nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, that is to say, the provisions contained in sections 67 to 74 of this Act shall not affect the provisions of section 34 relating to double insurance[2]

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1 See *Cunard S S Co v Marten* (1901) 2 K B 511 C A (insurance by a carrier whether an insurance on the goods or an insurance against liability to the owners thereof) *Crawley v Cohen* (1832) 3 B and Ad 478 (policies by carriers in respect of goods carried by them construction of clauses in such policies) *Joyce v Kennard* (1871) L R 7 Q B 78, distinguished in *Holman & Sons Ltd v Merchants Marine Insurance Co Ltd* (1919) 1 K B 383 *see* also Notes under section 16 *supra*

2 *See* Notes under section 34, *supra*

4 **Insurer's rights** —Sub-section (2) also confers certain rights on the insurer in connection with the provisions relating to the measure of indemnity The rights or privileges are as follows

(i) he can disprove the interest wholly or in part of the assured in the subject matter insured , or

(ii) he can show that the whole or any part of the subject-matter insured was not at risk under the policy at the time of loss

Particular average warranties

76 (1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable , but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part

(2) Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage

(4) For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject matter insured Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded

SYNOPSIS

1 *Scope*
2 *Object of the section*
3 *Right of the assured*
4 *Insurer's liability*
5 *Calculation of percentage and its basis*

1 **Scope** —This section restricts the right of the assured in the measure of indemnity that he can recover from the insurer under a policy The assured is so restricted in his right of recovery where there are particular average warranties contained in the policy These particular average warranties may be in the following forms

(i) where the subject-matter insured is warranted free from particular average wholly, (ii) where the subject-matter insured is warranted free from particular average under a certain percentage,

or (iii) where the subject matter insured is warranted free from particular average under a specified percentage The section also lays down the principle for ascertaining whether the specified percentage has been reached

The section corresponds to section 76 of the Marine Insurance Act 1906[1]

2 Object of the section —There are goods of various kinds which may either by their very nature deteriorate easily by ordinary perils of the seas or their loss is not easily ascertainable whether caused by the perils insured against or by their inherent vice To obviate these difficulties policies generally contain clauses, such as "warranted free from particular average" or "warranted free from particular average under a certain percentage" The provisions of this section are intended to cover those cases

In Lloyd's policy such a clause is known as memorandum which is usually inserted at the bottom of the policy A form of such a clause is given below

> "Warranted free from average under the percentage specified in the policy, unless general, or the vessel or craft be stranded, sunk or burnt, but notwithstanding this warranty the underwriters are to pay the insured value of any package which may be totally lost in loading, transhipment or discharge, also for any loss of or damage to the interest insured which may reasonably be attributed to fire, explosion, collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water, or to discharge of cargo at port of distress This clause shall operate during the whole period covered by the policy "[2]

3 Right of the assured —Sub-section (1) provides that where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part unless the contract contained in the policy be apportionable but he can recover (i) a loss incurred by a general average sacrifice, and (ii) a total loss of any apportionable part where the contract is apportionable

Where the policy provided that dockload should be warranted free of particular average, it was held that the warranty did not apply to goods which were intended to be loaded on dock but were damaged before being so loaded[3]

4 Insurer's liability —Sub-section (2) provides that where the subject matter insured is warranted free from particular average, whether wholly or under a certain percentage, the insurer is liable, notwithstanding, (i) for salvage charges, (ii) for particular charges, and (iii) for other expenses properly incurred pursuant to the provisions of the suing and labouring clause with a view to avert a loss insured against The loss spoken of is either a total loss or a loss amounting to the specified percentage It follows, there

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1 6 Edw 7 C 41

2 Institute cargo clauses (W A) clause 5 see also *A S Ocean v Black Sea and Baltic General Insurance Co* (1933) 51 Ll L Rep 305 C A (special clause covering ice damage irrespective of percentage)

3 *G H Renton & Co Ltd v Caledonian Insurance Co Ltd* (1933) 149 L T 230

fore, that although salvage charges can be recoverable as a loss by perils insured against, they do not constitute a particular average loss [1]

5 **Calculation of percentage and its basis**—The calculation of percentage and its basis has been laid down in sub-sections (3) and (4) The basis of the calculation of percentage should be as follows

Where the subject matter insured is warranted free from particular average under a specified percentage, to make up such specified percentage, (i) a general average loss cannot be added to a particular average loss, nor (ii) can the particular charges and the expenses of and incidental to ascertaining and proving the loss be included, but in ascertaining whether the specified percentage has been reached, regard must be had only to the actual loss suffered by the subject-matter insured The principle that a general average loss cannot be added to particular average loss to make up the specified percentage adopts the decision in *Price & Co* v *Al Ships' Small Damage Insurance Association* [2] The specified percentage is calculated not on the whole amount at risk under the policy, but only that which was at risk at the time of the loss [3]

Successive losses

77 (1) Unless the policy otherwise provides, and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured

(2) Where under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss

Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause

SYNOPSIS

1 *Scope*
2 *Insurer's liability for successive losses*
3 *Proviso*
4 *Successive losses when can be added*

1 **Scope**—This section makes the insurer liable for successive losses, although their total amount exceeds the sum insured It also enables the assured to recover a loss as total loss where a partial loss occurs but is followed by a total loss where the partial loss was not repaired nor made good The proviso keeps the liability of the insurer unaffected under the suing and labouring clause

The section corresponds to section 77 of the English Act of 1906

2 **Insurer's liability for successive losses**—Sub-section (1) provides that the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured But this rule is subject to the provisions of this Act and unless the policy otherwise provides Thus, where a ship is actually repaired during the time the policy is in force, and is afterwards totally lost within the said time before she arrived at her port

1 For particular average and particular charges *see* Notes under section 64, for suing and labouring clause, *see* section 78, and for salvage charges *see* section 65
2 (1889) 22 Q B D 560 C A
3 *Rohl* v *Parr*, (1796) 1 Esp 445

of destination on the insured voyage, the cost of repairs may be recovered over and above the total loss But where the owner has not paid for the repairs or he does not remain liable for such repairs, for instance, when the cost of repairs has been met with money raised on bottomry, the rule aforesaid has no application [1]

Exception to the rule above stated has been laid down in sub-section (2), namely, where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the particular average loss can only recover in respect of the total loss, the particular average loss Hence it is only in this case, being merged in the subsequent total loss Thus, where a ship warranted the moment of the expiration of the policy that the liability of the insurer for a partial loss is definitely determined [2] Thus, where a ship warranted free from capture sustains an average loss and is thereafter captured, before any repairs are done, the insurer would not be liable at all under the policy, neither for the average loss, because it is merged in the total loss nor for the total loss by capture, because the insurance was warranted free of capture [3]

The rule of merger as above stated applies only to a case where the partial and total loss both occur during the currency of the same policy But the rule will have no application where a ship is insured by two policies Thus, where a ship is insured by two policies, one at and from London to Calcutta and for thirty days after arrival, and the second a valued policy at and from Calcutta to London, a serious damage was sustained by her during the currency of the first policy and she was brought to Calcutta where she was placed in dry dock for repairs When some repairs was carried out and after the expiration of the first policy When some repairs was troyed by fire when in dry dock In the circumstances the assured would be entitled to recover under the first policy the full amount of the partial loss repaired or unrepaired and under the second valued policy he would be entitled to recover the full amount insured as for a total loss [4]

3 **Proviso**—Claims under the suing and labouring clause of the policy are not affected by the fact that the insurer has paid other claims up to or exceeding the sum insured

4 **Successive losses when can be added**—Successive distinct particular average losses, occurring during the voyage in the case of a voyage policy can be added together, whether on ship, freight or cargo and the insurer will be liable for the same even if the aggregate exceeds the specified percentage, but in the case of a time policy, all the losses cannot be added together occurring during the insured period Such average losses as have occurred on the same voyage can only be added together [5]

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1 *The Dora Forster* (1900) 16 T L R 380
2 *Knight v Faith* (1850) 15 Q B 649 668 *per* Lord Campbell C J
3 *Lewis v Janson* (1810) 12 East 648
4 *Sedgett v Secretan* (1871) L R 6 C P 616 cf *Berker v Janson* (1868) L R 3 C P 303 *Woodside v Globe Marine Insurance Co* (1896) 1 Q B 105 but see *British and Foreign Insurance Co Ltd v Wilson Shipping Co Ltd* (1922) 1 A C 188 H L where a ship was damaged by Marine risks and while under repair was totally lost by war risks held partial loss merged in total loss *Stewart v Merchants Marine Insurance Co* (1885) 16 Q B D 619 C A *Price & Co v All Ships Small Damage Insurance Association* (1889) 22 Q B D 580 C A and see also *Portrola S S Co Ltd v Royal Exchange Assurance Corporation* (1922) 147 L T 217 (a time policy providing such voyage to be deemed to continue until the ship had discharged two cargoes held the voyage to be regarded as continuing when she had only discharged one cargo)

Hence it follows that the object of the suing and labouring clause to encourage the assured, in case of accident, to take all necessary steps the preservation of the property insured For this purpose the insurer al agreed to contribute to any expenditure for the purpose of averting any lo pending loss This agreement the insurer makes is without prejudice t the insurance and to the notice of abandonment in the case of a constructive total loss The right of the assured to recover in case of a total loss not only the entire amount insured but also the expenses incurred under the clause is due to the clause being made supplementry to and distinct from the contract of insurance embodied in the policy [1]

3 Non applicability of the clause—The suing and labouring clause does not apply to the following cases

(i) Where an insurance is effected by a carrier of goods not upon the cargo itself, but for the purpose of protecting himself from liabilities which he might incur as carrier,[2]

(ii) Where the costs incurred by the assured in successfully defending an action brought against him to recover a loss in respect of which the insurer would have been liable under the running down clause,[3]

(iii) Where the policy is one against total loss only, and there is a danger, not of a total loss, but only of a partial loss, the expenses incurred to prevent such partial loss [4]

4 Applicability of the clause—The suing and labouring clause applies where any loss or misfortune covered by the policy happens but if the loss or misfortune is not covered by the policy, the clause does not come to operate Thus, where goods are insured free of average or free of average under five per cent and there is a danger of a total loss or a loss exceeding five per cent which is averted by the action of the assured or his agents so that the resulting loss although not covered by the Policy, the expenses so incurred to avert the loss may be recovered under this clause, even though actual loss cannot be claimed [5]

5 Charges covered by the clause—The suing and labouring clause covers particular charges and not general average losses and contributions, salvage charges and expenses incurred for the Purpose of averting or diminishing any loss not covered by the Policy But maritime salvage charges are recoverable only under the head of a loss by a peril insured against and cannot be recovered in addition to the sum insured [6]

6 U S A—The suing and labouring clause in U S A is a distinct and independent contract having reference to charges not covered by the insurance, adopted for the purpose of permitting insured to take every means for the recovery of the property, without receiving his right to abandon, and

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1 *See Lohre v Aitchison* (1878) 3 Q I D 558 C A at p 567 *per* Pratt L J confirmed (1879) 4 App Cas 755 H L at p 763

2 *Per* Lord Hackburn *Cornard S S Co v Morton* (1883) 2 L R 511 C A at p 763

3 *Xenos v Fox* (1869) L R 4 C P 665 1 Ex Ch

4 *Great Indian Peninsular Peril Co v Saunders* (1862) 2 Ex 430 affirmed 7 Ex Ch 116 Ex Ch *Leeth v Gen'r* (1883) 15 C I N S 251 but see *Walden Brothers Perkin Co Ltd v Gore* (1917) 1 K I 610

5 *Aitchison v Imperial Marine Insurance Co* (1877) 1 C P 595 affirmed in (1877) L R 2 C P 557 C A approved in *Moor v Fell* (1878) 1 C P D 358 *See Lucas v Dixon* (1878) 4 C P D 357 C A *Aitchison v Lohre* (1879) 4 App Cas 755 H L

6 *Aitchison v Lohre* (1879) 4 App Cas 755 H L *Aitchison v Lohre* (1878) 4 C P D 571 C A affirmed *supra*

to bind the underwriter to reimburse insured for the reasonable amount of the expenses incurred [1]

"The law is well settled that the suing and labouring clause is a separate insurance and is supplementary to the contract of the underwriter to pay a particular sum in respect to damage sustained by the subject matter of the insurance Its purpose is to encourage and bind the assured to take steps to prevent a threatened loss for which the underwriter would be liable if it occurred, and when a loss does occur to take steps to diminish the amount of the loss "[2]

The following expenses held recoverable counsel's fees and disbursements incurred, Marshal's fees, costs of suit, cost of launching a stranded vessel, expense of recovery of captured property, returning ship to port and unloading her to ascertain extent of damages, transhipping goods at an intermediate port when necessary to avert a loss from a peril insured against, wharfage, selling insured property and such like expenses [3]

The following expenses are not recoverable cost of repairs to the vessel refitting the cargo for the market, extra freight paid, and salvage expense generally [4]

RIGHTS OF INSURER ON PAYMENTS

Right of subrogation

79 (1) Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss

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1 *American Merchant Marine Insurance Co* v *Liberty Sand and Gravel Co* 282 F 514

2 *White Star S S Co* v *North British and Mercantile Insurance Co* 48 Lw Suppl 808 812

3 See *Smith* v *Switzerland General Insurance Co* 203 New York Suppl 195 *Pride* v *Providence Washington Insurance Co* 6 Penny Dist 227 *Wallace* v *Thames etc Insurance Co* 22 Fed Rep 66 *Francis* v *Ocean Insurance Co* , 6 Golden (N Y) 404 , *Alexandra* v *Sun Mutual Insurance Co* , 51 New York 253 *St Paul Fire and Marine Insurance Co* v *Pacific Cold Storage Co* 157 Fed Rep 625 *McBride* v *Marine Insurance Co* 7 Johns 431

4 *Alexandra* v *Sun Mutual Insurance Co supra Gary* v *Boylston Fire and Marine Insurance Co* 107 Mass 130 *Firemen's Fund Insurance Co* v *Trojan Powder Co* 293 Fed Rep 305 *Busby* v *Phoenix Insurance Co* 31 Fed Rep 122

SYNOPSIS (s. 79

1 Scope
2 Subrogation, meaning of
3 Extent of right of subrogation
4 Right of subrogation and right arising on abandonment, difference
5 Limitations on the doctrine of subrogation
(i) Insurer must first pay
(ii) Assured himself must have been able to bring action
(iii) Benefit must be incidental to loss
(iv) Where excluded by the policy
(v) Where there is no liability under the policy at all
(vi) Voluntary payment to assured
6 Property insured by persons having conflicting interests
7 U S A

1 Scope—This section lays down when and where the insurer's right to subrogation arises His right to subrogation arises only when he pays for a total loss, either of the whole or of any apportionable part in the case of goods But when he pays for a partial loss, he does not acquire any title to the subject-matter insured or such part of it as may remain, yet he is subrogated to all the rights and remedies of the assured in the subject-matter insured in so far as the assured has been indemnified by such payment for the loss

The doctrine of subrogation is closely analogous to the salvage principle and the doctrine of abandonment The section illustrates the principle that the assured cannot take with both hands The right of subrogation clothes the insurer to recover from the assured the value of any benefits received by him incidental to the loss Any sums received by him which diminish his loss must be held by him on trust for his insurer, who has an equitable proprietary interest in such sums [1]

The section corresponds to section 79 of the English Act of 1906

2 Subrogation, meaning of—The right of subrogation is the right of an insurer who has paid the insurance money to receive the benefit of all the rights of the assured against third parties which, if satisfied, will extinguish or diminish the ultimate loss sustained [2] This right is a corollary of the general principle that insurance is only a contract to indemnify the assured and it does not apply to contracts, such as life insurance which are not contracts of indemnity [3] Lord Blackburn observed thus 'The general rule of the law (and it is obvious justice) is that when there is a contract of indemnity (it matters not whether it is a marine policy or a policy against fire on land or any other contract of indemnity) and a loss happens, anything which reduces or diminishes that loss reduces or diminishes the amount which the indemnifier is bound to pay and if the indemnifier has already paid it, then if anything which diminishes the loss comes into the hands of the person to whom he has paid it it becomes an equity that the person who has already paid the full indemnity is entitled to be recouped by having that amount back' [4] The principle of subrogation may be illustrated thus where two ships *A* and *B* came into collision which was due to the negligence of those in charge of *B*, the owner of *A*, who has insured her, could recover the loss from the owner of *B* who had no right to resist the claim

1 *Re Miller Gibb* (1957) 1 W L R 703
2 *Castellain v Preston* (1883) 11 Q B D 380
3 *Insurance Co v Brown* (1877) 95 U S 754 *Burnand v Rodocanachi* (1882) 7 App Cas 333, 339 see also *Mancock v Bryant* (1942) 2 All E R 671 *North British and Mercantile v London Liverpool and Globe* (1877) 5 Ch D 569 *Darrell v Tibbits* (1880) 5 Q B D 560 *Liverpool Steam Co v Phoenix* (1883) 129 U S 397, 462.

on the ground that the owner of *A* was entitled to recover or even had already recovered from his insurer If the owner of *A* had recovered his loss from the owner of *B*, he was under an obligation to account to the insurer for the money he had so received so that his claim against the latter would be *pro tanto* reduced or extinguished if he had recovered a complete indemnity [1] The owner of *A* might, however, in the first instance recover his loss from the insurer in which case the latter would be subrogated to the right of the owner of *A* to recover the loss from the owner of *B* [2]

3 **Extent of right of subrogation** —The extent of the right of subrogation has been well stated thus "As between the underwriter and the assured, the underwriter is entitled to the advantage of every right of the assured, whether such right consists in contract fulfilled or unfulfilled, or the remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be, or has been exercised or has accrued, and whether such right could or could not be enforced by the insurer in the name of the assured, by the exercise or acquiring of which right or condition the loss against which the assured is insured, can be, or has been, diminished That seems to put this doctrine of subrogation in the largest possible form [3]

The rights of the underwriter are not affected by any contract which the assured may make with another insurer or any other person, but where the insurer subscribes the policy under an implied condition that the assured may avail himself of such a right which he reserves in the policy the insurer has no right of subrogation in such a case [4] The insurer's right of subrogation exists even where the assured has any of his rights and remedies against third parties to which the insurer would have been subrogated Thus, a release given to a third party by an assured who has already to the knowledge of the third party received payment from his insurer will not be effective to debar the insurer to be subrogated [5] Even any payment honestly made by the insurer in satisfaction of a claim by the assured entitles the former to the remedies available to the latter although the payment was not within the terms of the policy [6]

But the insurer has no right of subrogation where the amount paid by him is not sufficient to give the assured a complete indemnity, even though such payment is the whole amount under the policy [7] So also there is no right of subrogation in respect of loss which the insurer has not paid for [8] It may also be noted that "although the insurers are not entitled to the benefit of what is recovered until the assured has received a full indemnity the right of subrogation as an equitable right or charge upon the assured's *choses in-*

1 *Stearns* v *Village Main Reef Gold Mining Co* (1905) 10 Com Cas 89 C A , applying the principle of *Randol* v *Cochran* (1748) 1 Ves Sen 98

2 See *Assicurazioni Generali de Triesto* v *Empress Assurance Corporation Ltd* (1907) 2 K B 814 (an illustration that the insurer is subrogated to the rights of the assured as regards his remedy for tort) *see* also *The Welsh Girl* (1906) 22 T L R 475 affirmed *The Commonwealth* (1907) P 216 *The Charlotte* (1908) P 206 C A

3 *Castellain* v *Preston* (1883) 11 Q B D 380, 388 *per* Brett L J

4 *Boag* v *Standard Marine Insurance Co Ltd* (1937) 2 K B 113 C A , (1937) All E R 714 citing 2 Phillips Law of Insurance 5th Ed S 1715

5 *West of England Fire Insurance Co* v *Isaacs*, (1897) 1 Q B 226, C A

6 *King* v *Victoria Insurance Co* (1896) A C 250 (P C)

7 *Driscoll* v *Driscoll* (1918) 1 I R 152 (the case relates to fire insurance)

8 See *Law Fire Assurance* v *Oakley*, T L R 309

action arises upon payment of the insurance money, although such payment by itself does not completely indemnify the assured[1] Lord Atkin observed "Subrogation will only give the insurer rights up to 20 sh. in the pound on what he has paid "[2] But where the sum insured or the agreed valuation is less than the true value of the thing lost, the insurer is entitled to damages received by the assured in respect of loss to that extent Thus, where a ship which is valued less than her real value was lost in a collision, the insurers were held entitled in full to the collision damages, recovered by the assured in proportion of the true value[3] Again, where damages less than the agreed valuation are recovered in respect of a partial loss, the insurer may retain them in spite of the fact that the actual cost of repairs exceeds the agreed valuation[4] In the undermentioned case the freight underwriters were held to be subrogated to freight earned by the vessel after she had become a constructive total loss even where the freight policy contained a clause that in the event of total or constructive or constructive, the amount underwritten by the policy should be paid in full and the full policy also provided that in the event of total or constructive loss, no claim for freight should be made by the underwriters[5]

4 **Right of subrogation and right arising on abandonment, differ ence** —There is an essential difference between the right of subrogation and the right arising on abandonment In the latter, the insurer becomes entit led to the property in the thing insured and to all rights incident to the property, but in the case of the former, he becomes entitled to rights and remedies which may not be dependent upon the ownership of the thing insured Thus, where the owner of a ship insured has been paid as for a total loss, what remains of the ship and all rights incident thereto passes to the insurer as from the time of the loss the total loss whereof is paid, as for instance, the right to receive payment of freight accruing due but not earned at the time of the loss is one of those rights incident to the property in the ship and hence it passes to the insurer on abandonment But the assured's right to recover damages from a third party is not a right incident to the property in ship, it does not pass to the insurer on abandonment But the assured's right on payment of a total loss by virtue of the doctrine of subrogation Even where a claim for a partial loss having been satisfied, the right to recover it passes to the insurer on the like principle[6]

5 **Limitations on the doctrine of subrogation** —There are certain limitations from which the doctrine of subrogation suffers, *i e* —

(*i*) *Insurer must first pay* —No right of subrogation accrues to the insurer until he has paid under the policy[7] Therefore the assured remains *dominus litis* until he has received a complete

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1 MacGillivray on Insurance Law Vol 2 5th Ed p 914

2 *Glen Line* v *Attorney-General* (1930) 36 Com Cas 1 14

3 *Thames and Mersey Marine Insurance* v *British and Chilian S S Co* (1916) 1 K B 30 affirmed in (1916) 1 K B 30 C A

4 *Goole & Hull Steam Towing Co* v *Ocean Marine Insurance Co Ltd* (1928) 1 K B 589

5 *Coker* v *Bolton* (1912) 3 K B 315

6 *Simpson* v *Thomson* (1877) 3 App Cas 279 H L 292 *per* Lord Blackburn *see* also *North of England Iron S S Insurance Association* v *Armstrong* (1870) L R 5 Q B 244 where the ship was sunk in a collision and became an actual total loss so that there was nothing to abandon ; *see* the comments on this case in Arnould on Marine Insurance 14th Ed., sections 1228-1230 and 1 in *Burnand* v *Rodocanachi* (1882) 7 App Cas 333 H L and in Halsbury's Laws of England Vol 22. Simonds 3rd Ed p 162.

7 *See Castellain* v *Preston* (1882) 11 Q B D 380 C A *Thames & Mersey Marine Insurance Co* v *British and Chilian S S Co* (1915) 2 K B 214 affirmed in (1916) 1 K B 30 C A *Goole and Hull Steam Towing Co Ltd* v *Ocean Marine Insurance Co Ltd* (1928) 1 K B 589 *Liverpool Steam Co* v *Phoenix* (1838) 129 U S 397

The advantages of subrogation do not include benefits in the nature of a voluntary gift which the assured may have received from a third party unless those benefits accrue to the insurer[1] But the doctrine will cover an *ex gratia* payment by another insurance company even though the assured had no right of action for it, provided it is incidental to the subject matter of the loss[2]

6 Property insured by persons having conflicting interests—Where each of two parties interested in property has insured separately in respect of his own interest, the effect of the doctrine of subrogation may be to throw the whole of the loss on one insurer Thus, where B & Co, being wharfingers, held grain belonging to R & Co, merchants, and by the custom of trade, the wharfingers were liable for loss, however occurring Both insured the grains, each firm for its own benefit, and on a loss occurring, it was held that R & Co's insurers, upon paying the loss, were entitled to be subrogated to their claim against B & Co, the result being that B & Co's insurers bore the whole loss, notwithstanding the *pro rata* conditions in the policies[3]

7 U S A—The application of the principle that the insurer has no right of subrogation against an insured is exemplified in *Nicholson Transit Co* v *Nicholson Universal S S Co*,[4] owner of vessel and charterer, *Great Lakes Transit Corporation* v *Inter-State Steamship Co*,[5] marine policy procured by carrier "for account of whom it may concern", for waiver of right to subrogation, see *Waber* v *United Hardware, etc Co*,[6] *North Western Fire and Marine Insurance Co* v *Fred T Ley and Co*[7] the insurer is entitled to subrogation to the insured's claim in tort against the United States,[8] for the permissibility of splitting the cause of action against the tortfeasor, as between the insured loss and the uninsured, see *Lloyds Insurance Co* v *Vicksburg Traction Co*[9]

80 (1) Where the assured is overinsured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract

Right of contribution

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain a suit for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt

SYNOPSIS

1 *Scope*
2 *Subrogation and contribution difference*
3 *"Over insured by double insurance"*
4 *Conditions giving rise to right of contribution*
5 *Contribution excluded by contract*
6 *Rateable portion, what is*
7 *Suit for contribution*

1 *Burnard* v *Rodocanachi* (1882) 7 App Cas 333 H L but see *Stearns* v *Village Gold Mining Co* (1905) 10 Com Cas 89 where it was held that the doctrine might be extended to gifts

2 *Austin* v *Zurich* (1945) 2 All E R 243 246 not disapproved (1945) 1 All E R 316

3 *North British and Mercantile Insurance Co* v *London Liverpool and Globe Insurance Co* (1877) 5 Ch D 569 C A (the case relates to fire policy but the principle equally applies to marine policy)

4 69 L Ed 90

5 (1937) 301 U S 646

6 (1941) 31 N W 2d 456

7 (1933) 264 N Y S 517

8 *U S* v *Aetna Casualty and Surety Co* (1949) 338 U S 366

9 (1918) 106 Miss 493

1 Scope.—This section lays down the principle of contribution as between the different insurers. The principle is that where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract. The section also provides for the case where an insurer pays more than his proportion. In such a case, where he pays more or in full, he is entitled to maintain an action for contribution against the other insurers on the same policy as co-sureties are bound to contribute *inter se* when anyone is called upon by the creditor to pay.

The doctrine of contribution was evolved and laid down by Lord Mansfield, who held that in marine insurance an insurer who paid more than his rateable proportion of the loss should have a right to recover the excess from his co-insurers, who had paid less than their rateable proportion.[1] Speaking generally, when several persons are co-sureties for the same debt and one of them is called upon to pay more than his share he is entitled to contribution from the other proportionately to the amounts for which each is a surety.[2]

The section corresponds to section 80 of the English Act of 1906.

2 **Subrogation and contribution, difference.**—Contribution is quite distinct from subrogation.[3] The essential difference between the two may be noticed thus—(i) Subrogation ensures that the assured shall receive no more than an indemnity, but contribution ensures that the insurers shall not indirectly suffer injustice *inter se* because of that rule.

(ii) A claim of subrogation must be brought in the name of the assured while a claim for contribution must be brought in the insurer's own name.[4]

(iii) Contribution implies more than one contract of insurance and it is only where two or more policies are involved that the doctrine of contribution comes into play, but there is no such requirement in the case of subrogation.

The difference may well be explained by the following illustration:

A insures goods with Company *B* and *C* insures the same goods with Company *D*. If Company *B* pays *A* they may have a remedy either by subrogation or contribution. If *C* is liable to *A* in respect of the loss, Company *B* will be subrogated to *A*'s right against *C*, and will eventually recover the whole amount paid from Company *D*. If *A* is liable to *C*, Company *B* will be entitled to recover nothing, unless *C* has also recovered *A*'s interest, in which case Company *B* will be entitled to contribution from Company *D*.[5]

3 **"Overinsured by double insurance"**—*See* Notes under section 34, *supra*.

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1 *Newby* v *Reed* (1763) 1 W Bl 416; *Rogers* v *Davis* (1777) 2 Lark 601; *Davis* v *Goldart* (1777) 2 Lark 601.

2 *Deering* v *Earl of Winchelsea*, (1787) 1 Cox Eq Cas 318; *see also* 2 White and Tud L C 5th Ed 466; Halsbury's Laws of England Vol 18 p 484.

3 *North British* v *London Liverpool and Globe*, (1877) 5 Ch D 569.

4 *Austin* v *Zurich* (1915) K B 204; (1916) 1 All E R 416.

5 *North British* v *London* &c *Globe* (1877) 5 Ch D 569.

this principle when *A* was liable for Rs 2,500 only, and the sum insured in the case of the other was Rs 40,000, but the loss only amounted to Rs 2,680, they should each share the loss in the proportion, 2,500 2,680

The question of apportioning the total sum as between the different underwriters has not been settled but various methods have been adopted in case of fire insurance policies In respect of the latter, policies have been classified into concurrent and non-concurrent policies and various methods have been suggested to assess the share of each insurer In case of concurrent policies it is suggested that the proper basis of contribution is according to the amounts insured upon the property, and not according to the liabilities of the general policies for the actual loss With regard to non concurrent policies the practice among the British offices is to adhere to the same basis as in concurrent policies But other methods of apportionment have been suggested Mr H S Bell suggested the following method

(i) Exhaust the specific insurances first, (ii) where there are two or more non concurrent policies and none is more specific than another, eliminate the risks covered by one insurance only But Messrs Laird suggest that the basis of contribution in such cases in proportion to sums assured should be discarded and the contribution ought to be in proportion to the liability of each insurer for the loss on each item [1]

7 Suit for contribution —Sub-section (2) provides that if any insurer pays more than his proportion of the loss, he is entitled to maintain a suit against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt

The law of contribution as between co-sureties is contained in section 146 of the Indian Contract Act (X of 1872) That section provides that where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor Thus, co-sureties are liable to contribute equally provided they are sureties for the same debt [2]

81 Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance

Effect of under insurance

SYNOPSIS

1 *Scope* 2 *Under-insurance, its effect*

1 Scope —This section speaks of the effect of under insurance as opposed to over-insurance discussed under section 34, *ante* Its effect is that the assured is deemed to be his own insurer in respect of uninsured balance

The section corresponds to section 81 of the English Act of 1906

1 For elaborate discussion on the subject, *see* MacGillivray *on Insurance Law* 5th Ed Vol 2 pp 902—912 *see* also Arnould on Marine Insurance 14th Ed section 334, where the problem has also been approached from the point of view of sea *policies*

2. *See* also sections 69 and 70 of the Indian Contract Act (X of 1872)

4 Conditions giving rise to right of contribution —The following conditions must be satisfied before any right of contribution arises

(*i*) Two or more insurances must have a common subject matter, *i.e.* the subject-matter insured must generally be property, *e.g.*, ship or goods But an insurance upon the same property may not be upon the same subject-matter Thus, the insurer under a valued policy has no right of contribution against a subsequent insurer under an increased value policy, the latter, though an insurance on the subject-matter, is not on the property itself [1]

(*ii*) The loss must be due to a peril which is common to both policies If there be one common peril, it does not matter that a number of other perils were also included in the respective policies [2] But where the policies differ sufficiently in their scope the right of contribution does not apply [3]

(*iii*) The same interests must be covered by both policies If one interest is common to both, it does not matter if other interests are covered by one of the policies Thus, where a mortgagor insures his own interest and the mortgagee insures both his and mortgagor's interest, their respective insurers will have right of contribution as against each other [4] But they will have no such right as against each in case where the mortgagor insures his own interest and mortgagee his own [5] It may be noted that the principle applies only where the actual loss falls on the common interest Thus, where a bailee insures his own interest in goods and the interest of their owner and the latter also insures his interest and the goods are lost by a peril in respect of which the bailee is liable to his bailor, in such a case there will be no right of contribution as between their insurers The bailor's insurer, upon payment, is subrogated to the rights of the bailee [6]

(*iv*) Both policies must be enforceable Both insurances must be such that the assured is entitled to call upon either insurer to pay in respect of the loss [7] The policies must be legally binding and enforceable at law [8]

5 Contribution excluded by contract —Sometimes marine policies contain a clause that they are not to enure to the benefit of any fire insurance company, in such a case contribution does not operate between the marine insurer and a fire insurer, the latter must bear the whole loss [9]

6 Rateable portion, what is —No general principle has been laid down regarding how the share of each insurer should be assessed In *American Surety Co* v *Wrightson*,[10] Hamilton, J held that the insurers were liable to contribute in proportion to the amounts for which each would have been liable had there been no other insurance Thus, according to

1 *Doag* v *Standard Marine* (1937) 2 K B 113
2 *American Surety Co* v *Wrightson* (1910) 27 T L R 91
3 *Ibid* at p 93 *per* Hamilton J
4 *Nichols* v *Scottish Union* (1885) 2 T L R 190
5 *Scottish Amicable* v *Northern Assurance* (1883) 11 R (Ct of Sess) 287
6 *North British* v *London Liverpool and Globe* (1877) 5 Ch D 569
7 *Jenkins* v *Deane* (1933) 103 L J K B 250 254-255 *per* Goddard, J
8 *Austin* v *Zurich* (1945) K B 250; *see* also *Nichols* v *Scottish Co-operative Insurance* 15 S C 692
9 *See Symington* v *Union Insurance Society of Canton* 2 (1928) 97 L J K B 646
10 (1910) 27 T L R 91

this principle when *A* was liable for Rs 2,500 only, and the sum insured in the case of the other was Rs 40,000, but the loss only amounted to Rs 2,680, they should each share the loss in the proportion, 2,500 2,680

The question of apportioning the total sum as between the different underwriters has not been settled but various methods have been adopted in case of fire insurance policies In respect of the latter, policies have been classified into concurrent and non-concurrent policies and various methods have been suggested to assess the share of each insurer In case of concurrent policies it is suggested that the proper basis of contribution is according to the amounts insured upon the property, and not according to the liabilities of the general policies for the actual loss With regard to non concurrent policies the practice among the British offices is to adhere to the same basis as in concurrent policies But other methods of apportionment have been suggested Mr H S Bell suggested the following method

(i) Exhaust the specific insurances first, (ii) where there are two or more non concurrent policies and none is more specific than another, eliminate the risks covered by one insurance only But Messrs Laird suggest that the basis of contribution in such cases in proportion to sums assured should be discarded and the contribution ought to be in proportion to the liability of each insurer for the loss on each item [1]

7 Suit for contribution —Sub-section (2) provides that if any insurer pays more than his proportion of the loss, he is entitled to maintain a suit against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt

The law of contribution as between co-sureties is contained in section 146 of the Indian Contract Act (X of 1872) That section provides that where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor Thus, co-sureties are liable to contribute equally provided they are sureties for the same debt [2]

81 Where the assured is insured for an amount less than the insurable value, or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance

Effect of under insurance.

SYNOPSIS

1 *Scope* 2 *Under-insurance, its effect*

1 Scope —This section speaks of the effect of under insurance as opposed to over-insurance discussed under section 34, *ante* Its effect is that the assured is deemed to be his own insurer in respect of uninsured balance

The section corresponds to section 81 of the English Act of 1906

1 For elaborate discussion on the subject *see* MacGillivray on Insurance Law 5th Ed Vol 2 pp 902—912 *see* also Arnould on Marine Insurance 14th Ed section 354, where the problem has also been approached from the point of view of sea policies

2 *See* also sections 69 and 70 of the Indian Contract Act (X of 1872)

4 **Conditions giving rise to right of contribution** —The following conditions must be satisfied before any right of contribution arises

(i) Two or more insurances must have a common subject-matter, *i e*, the subject matter insured must generally be property, *e g*, ship or goods But an insurance upon the same property may not be upon the same subject-matter Thus, the insurer under a valued policy has no right of contribution against a subsequent insurer under an increased value policy, the latter, though an insurance on the subject-matter, is not on the property itself [1]

(ii) The loss must be due to a peril which is common to both policies If there be one common peril, it does not matter that a number of other perils were also included in the respective policies [2] *But where the policies differ sufficiently in their scope*, the right of contribution does not apply [3]

(iii) The same interests must be covered by both policies If one interest is common to both, it does not matter if other interests are covered by one of the policies Thus, where a mortgagor insures his own interest and the mortgagee insures both his and mortgagor's interest, their respective insurers will have right of contribution as against each other [4] But they will have no such right as against each in case where the mortgagor insures his own interest and mortgagee his own [5] It may be noted that the principle applies only where the actual loss falls on the common interest Thus, where a bailee insures his own interest in goods and the interest of their owner and the latter also insures his interest and the goods are lost by a peril in respect of which the bailee is liable to his bailor, in such a case there will be no right of contribution as between their insurers The bailor's insurer, upon payment, is subrogated to *the rights of* the bailee [6]

(iv) Both policies must be enforceable Both insurances must be such that the assured is entitled to call upon either insurer to pay in respect of the loss [7] The policies must be legally binding and enforceable at law [8]

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SYNOPSIS

1 *Scope* 2 *Under-insurance, its effect*

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1 For elaborate discussion on the subject, *see* MacGillivray on Insurance Law 5th Ed Vol 2 pp 902—912 *see* also Arnould on Marine Insurance 14th Ed section 334, where the problem has also been approached from the point of view of sea policies

2 *See also sections* 69 and 70 of the Indian Contract Act (X of 1872)

2 Under insurance, its effect—Where the assured is insured for an amount less than the insurable value, he is deemed to be his own insurer in respect of the uninsured balance Thus, if goods worth £300 are insured for £200, and half only of them are lost, the assured would be entitled to recover only £100 and as to £100, the uninsured balance, he would be deemed to be his own insurer and hence he would have to bear £50 of the partial loss [1] In the case of total loss he is entitled to the same proportion of the salvage [2]

RETURN OF PREMIUM

82 Where the premium, or a proportionate part thereof, is, by this Act, declared to be returnable—

Enforcement of return

(*a*) if already paid, it may be recovered by the assured from the insurer, and

(*b*) if unpaid, it may be retained by the assured or his agent

The Section enjoins that where the premium, or a proportionate part thereof, is, by this Act, declared to be returnable if already paid, it may be recovered by the assured from the insurer, and if unpaid, it may be retained by the assured or his agent

The section corresponds to section 82 of the English Act of 1906 [3]

The doctrine of the return of premium finds support in the dictum of Lord Mansfield thus "Equity implies a condition that the insurer shall not receive the price of running a risk if he runs none", and in such cases, "if the risk is not run, though it is by the neglect or even the fault of the party insuring, yet the insurer shall not retain the premium" [4] Such a doctrine has no place outside Marine Insurance Law [5]

83 Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured

Return by agreement

SYNOPSIS

1 *Scope* 2 *Return of premium by agreement*

1 Scope—This section cites an instance where the return of the premium or a proportionate part thereof is returnable under the Act and other instances or cases have been given in section 84 This section speaks of return of the premium by agreement between the parties

The section corresponds to section 83 of the English Act of 1906

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1 See *Sillen* v *Thornton* (1854) 3 E & B 868 888 *per* Campbell L C J *Anglo-Calfornian Bank* v *London Marine and General* (1904) 10 Com Cas 1 9

2 *The Welsh Girl* (1906) 22 T L R 475 affirmed in *The Commonwealth* (1907) P 216 C A

3 *See* Notes under sections 83 and 84 *post*

4 *Stevenson* v *Snow* (1761) 3 Burr 1237 1240

5 *Wolenberg* v *Royal Co-operative Society* (1915) 84 L J K B 1316, *per* Lush, H

2 Return of premium by agreement—The section enjoins that if the assured and the insurer agree by a stipulation in the policy that on the happening of a certain event, the premium or proportionate part thereof is returnable to the assured and when that event happens, the insurer is bound to return the premium or a proportionate part thereof, as the case may be, to the assured If the insurer does not so return, clause (*a*) of section 82 clothes the assured with the right to recover same from the insurer[1] Instances of such a stipulation may be found where a clause is inserted in a policy that in case the ship sails "with convoy and arrives" part of the premium should be returned[2], or where a clause is inserted in time policies stipulating that the premium should be reduced in the event of the vessel not being continuously employed during the whole of the insured period[3], clause providing *pro rata* return of premium in the event the vessel was sold or transferred to a new management[4], clause providing return of a portion of the premium on the condition that the vessel should not be employed in certain specified trades or within a specific area[5], policy stipulating return of premium while the vessel was "laid up in port"

For other kinds of insurance, see *Sun Fire* v *Hurt*[6], *Parr's Bank* v *Albert Mines*[7] and *Manby* v *Gresham Life*[8]

Return for failure of consideration

84 (1) Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured.

(3) In particular—

(*a*) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided there has been no fraud or illegality on the part of the assured, but if the risk is not apportionable, and has once attached, the premium is not returnable,

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1 See *Ionides* v *Harford* (1859) 29 L. J Ex 36

2 See *Simond* v *Boydell*, (1779) 1 Dough K. B 268 where Lord Mansfield has fully explained the meaning and object of the clause *see* also *Aguilar* v *Rodgers* (1797) 7 Term Rep 421 *Kellner* v *Le Mesurier* (1803) 4 East 396 *Leevin* v *Cormac* (1811) 4 Taunt 483n, *Dalgleish* v *Brooke* (1812) 15 East 295 *Langhorn* v *Allnutt* (1812) 4 Taunt 511 *Meyer* v *Gregson*, (1784) 3 Dough K.B 402 *Audley* v *Dupp* (1800) 2 Bos and P 111

3 See *Hunter* v *Wright* (1830) 10 B and C 714 for construction of the clause *see* also *Pyman* v *Marhen* (1906) 13 Com Cas 64 C A

4 *Gorsedd S S Co* v *Forbes* (1900) 5 Com Cas 413

5 *North Shipping Co Ltd* v *Union Marine Insurance Co Ltd* (1919) 24 Com Cas 161 C A

6 (1889) 14 App Cas 93 (P C.)

7 (1900) 5 Com Cas 116

8 (1861) 29 Beav 439

(*b*) where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable

Provided that where the subject-matter has been insured "lost or not lost," and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival,

(*c*) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of wagering,

(*d*) where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable,

(*e*) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable,

(*f*) subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable

Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable

SYNOPSIS

1 *Scope*
2 *Total failure of the consideration*
3 *Part only of subject-matter at risk*
4 *"Total failure of apportionable part of the consideration"*
5 *Over insurance*
6 *Fraud or illegality, effect of*

1 Scope—Apart from what has been laid down in section 83 about return of premium by agreement, this section speaks of further circumstances where the premium is returnable to the assured and where it is not. Sub-section (1) lays down the general rule of return of premium, namely, the premium becomes returnable where the consideration for the payment of the premium totally fails provided the assured or his agents do not commit any act of fraud or illegality. Sub-section (2) also lays down the general rule of return of a proportionate part of the premium, namely, such part becomes returnable where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration. Sub-section (3) lays down certain particular circumstances where the premium or a proportionate part thereof is returnable and where it is not so returnable

The premium is returnable, (*i*) where a policy is void or is avoided by the insurer as from the commencement of the risk provided there is no fraud or illegality on the part of the assured, (*ii*) where the subject-matter insured has never been imperilled, and (*iii*) where the assured has no insurable interest throughout the currency of the risk except where a policy is effected by way of wagering

A proportionate part of the premium is returnable, (*i*) where part of the subject-matter has never been imperilled, (*ii*) where the assured has over insured under an unvalued policy, and (*iii*) where the assured has over-insured by double insurance

But the premium or a proportionate part thereof, as the case may be, is not returnable, (*i*) where there is fraud or illegality on the part of the assured, (*ii*) where the risk is not apportionable, (*iii*) where the risk has once been attached, (*iv*) where the subject-matter insured has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, (*v*) where the policy is effected by way of wagering, (*vi*) where the assured has a defeasible interest which is terminated during the currency of the risk, (*vii*) where double insurance is effected knowingly by the assured, (*viii*) where policies are effected at different times and any earlier policy has at any time borne the entire risk or where a claim has been paid on the policy in respect of the full sum insured thereby

2 **Total failure of the consideration**—The risk which the insurer takes upon himself is the consideration for the payment of the premium and such consideration totally fails—

(*i*) where due to any cause no risk is incurred by the insurer, as where the subject matter insured having not been imperilled at all or the policy having not attached[1],

(*ii*) where there has been a breach of warranty, express or implied, as (*a*) where the ship is unseaworthy at the commencement of the risk[2], or (*b*) where the ship does not sail on a certain day or where the assured at the outset abandons the insured adventure[3], or (*c*) where the assured conceals or misrepresents though without fraudulent intention and in consequence the insurer repudiates the contract[4],

(*iii*) where throughout the currency of the risk the assured has no insurable interest[5], but where the assured on ship and freight had completed the voyage and earned freight, he could not claim the return of premium on the ground that he had no insurable interest by reason of want of title to the ship[6] In all the cases aforementioned there is total failure of considera tion and the premium, if it has been paid, is recoverable from the insurer and if not paid, it is not recoverable by the insurer provided there has been no fraud or illegality on the part of the assured or his agents or that the policy is not effected by way of gaming and wagering[7] But where the

1 *Henkle* v *Royal Exchange Assurance Co* (1749) 1 Ves Sen 317 *Long* v *Allen* (1765) Marshall on Marine Insurances 4th Ed 529, *Colby* v *Hunter* (1827) 3 C and P 7

2 *See* sub-section (1) of section 41 *supra*

3 *See* section 37 *supra*

4 *Feise* v *Parkinson* (1812) 4 Taunt 640 *Anderson* v *Thornton* (1853) 8 Exch 425 *see* also *North Eastern* 100A *Steamship Insurance Association* v *Red S Steamship Co* (1905) 10 Com Cas 245, affirmed in (1906) 12 Com Cas 26 C A, *see* also section 20, *supra*

5 *See* section 7 *supra*

6 *M Culloch* v *Royal Exchange Assurance Co* (1813) 2 Camp 406

7 *See* section 6 *supra*, for wagering contract

assured himself abandons the adventure, he should give notice to the insurer before he brings his action for recovery of the premium[1],

(*iv*) or where premium paid under a policy which is void, *i e*, as being made under a mistake of fact, or under a non existent policy which the assured erroneously believed to be in existence[2]

3 **Part only of subject matter at risk** —Clause (*b*) of sub-section (3) provides that where the subject matter insured in part has never been imperilled, a proportionate part of the premium is returnable Thus, where 100 bales of cotton are insured and only 50 bales are put on board, a return of half the premium must be made for short interest Likewise, where the freight of a full cargo is insured but at the time of the loss a complete cargo is not at risk, there should be a proportionate return of premium[3]

The proviso lays down that where the subject matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival[4]

4 **"Total failure of apportionable part of the consideration"** — Sub-section (2) provides th at where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is returnable to the assured provided there has been no fraud or illegality on his part[5] The undermentioned cases illustrate the above principle where the policy contained a warranty that the ship should sail with convoy for the voyage

5 **Over-insurance** —Clause (*e*) of sub-section (3) provides that where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable and clause (*f*) of that sub-section further provides that where the assured has over-insured by double insurance a proportionate part of the several premiums is returnable "The principle on which the clauses as to over-insurance and double insurance are founded is that if the risk in consideration of which the underwriter is paid the premium is not in fact incurred by him, or is not incurred to the full extent contemplated, there is a failure of consideration in whole or in part in respect of which the insurer must return premium or part of it"[6]

Where the over-insurance concerns a single policy, the contributions of the insurers to the return of premiums are rateable irrespective of the date of their subscriptions But where it concerns several policies on the same subject matter and the insured sum exceeds its value, all the insurers on such

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1 *Palyart* v *Lackie*, (1817) 6 M and S 290 Cf *Gatty* v *Field* (1816) 9 Q B 431

2 *See Lower Rhine Insurance* v *Sedgwick* (1899) 1 Q B 179 *Kelly* v *Solari* (1841) 9 M and W 54

3 See *Forbes* v *Aspinall* (1811) 13 East 323 (freight) *Rickman* v *Carstairs* (1833) 5 B and Ad 651 *Tobin* v *Harford* (1864)34 L J C P 37 Ex Ch (cargo) (these cases afford instances of short interest but question of return of premium was discussed therein) Cf *Eyre* v *Glover*, (1812) 16 East 218 (profits)

4 See *Larrinaga* v *Societe Franco Americaine* (1923) 29 Com Cas 1

5 *Stevenson* v *Snow* (1761) 1 Wm Bl 318 *Bermon* v *Woodbridge* (1781) 2 Dough K. B 781 *Tyrie* v *Fletcher* (1777) 2 Cowp 666 *Gale* v *Machell* (1785) Marshall 529 *Long* v *Allan* (1785) 4 Dough K B 402, *Routledge* v *Cooke* (1797) 1 Bos and P 172 *Meyer* v *Gregson* (1784) 3 Dough K. B 402

6 Halsbury's Laws of England Vol 22 Simonds 3rd Ed pp 170-171

several policies are to pay according to their respective subscriptions and hence they are bound to return the premium for the excess of the sum insured over the value of the subject-matter in proportion to their respective subscriptions [1]

But an exception to the above rule as to double insurance is provided in proviso to clause *(f)* of the said sub section, namely, where policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured, no premium is returnable

The exception to the rule as to double insurance that if any policy had borne the entire risk before the later policies were effected, no premium was returnable in respect of that policy, was propounded in *Fisk* v *Masterman* [2] These rules of law relating to double insurances do not prevail on the Continent American policies generally contain express provisions on the subject [3]

6 **Fraud or illegality, effect of** —Where the assured has acted fraudulently, he cannot recover any premiums he has paid for, although the risk has never been attached the Court will not allow him to set up his own fraud as the basis of his claim [4] But where the assured has been induced to take the insurance by the fraud of the insurer, the premium must be returned [5]

Similarly, where premiums are paid on a policy which is illegal, they are not recoverable The principle is that if the parties enter into an unlawful contract, the law will not normally lend its hand to get them out of their difficulties [6] Some instances of illegalities may be cited thus (i) where the contract of insurance has not been embodied in a stamped policy [7], (ii) where the policy is effected by way of gaming or wagering, or (iii) where the assured has no interest required by statute [8]

SUPPLEMENTAL

85 Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss

Ratification by assured

SYNOPSIS

1 *Scope* 2 *Ratification of contract of insurance*

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1 Marshall on Marine Insurance 4th Ed p 516

2 (1841) 8 M and W 165

3 *See* Arnould on Marine Insurance 14th Ed section 1262 *see* also Halsbury's Laws of England Vol 22 p 171

4 *Feise* v *Parkinson* (1812) 4 Taunt 640 641 *per* Gibbs J *Anderson* v *Thornton* (1853) 8 Ex 425 *per* Parke B, *Chapman* v *Fraser* (1793) 1 Park 8th Ed, p 456, *see* also *Rivaz* v *Gerussi*, (1880) 6 Q B D 222 C A *Tyler* v *Horne*, (1785) Marshall 8th Ed, p 525

5 *Refuge Assurance Co Ltd* v *Kettlewell* (1909) A C 243 H L, *Duffell* v *Wilson* (1808) 1 Camp 401 *see* also *Carter* v *Boehm* (1766) 3 Burr 1905 *Foster* v *Mutual Life* (1904) 20 T L R 15, H L *Merino* v *Mutual Life* (1904) 21 T L R 167 *Molloy* v *Mutual Life*, (1905) 22 T L R 59

6 *Busk* v *Walsh* (1812) 4 Taunt 290 292 *per* Lord Mansfield

7 *Re National Benefit Assurance Co Ltd* (1931) 1 Ch 46

8 See *Evanson* v *Crooks* (1911) 106 L T 264 *Elson* v *Crooks* (1911) 106 L T 462 *Haworth* v *Pioneer Life Assurance Co Ltd* (1912) 107 L T 15, *McCulloch* v *Lloyd Exchange* (1813) 3 Camp 466, *Leary* v *Beardsley* (1810) 2 Dough 468 *Pelgert* v *Leckie* (1817) 6 M and S 250

1 Scope —The section speaks of ratification of contract of insurance when it is made in good faith by one person on behalf of another even after the person ratifying it knows the loss The law of ratification is contained in sections 196—200 of the Indian Contract Act (X of 1872)

The section corresponds to section 86 of the English Act of 1906

2 Ratification of contract of insurance —The general principle of ratification is that it can only be effectual when he who ratifies could, at the time when he so ratified, have made the original contract But the section is a departure from that rule and it permits ratification even after a loss has happened Hence, it may be said that ratification after loss is peculiar to marine insurance [1] The section as framed permits a person to ratify a contract of insurance where he, after the occurrence of loss, hears that a policy has been effected on his behalf though without his authority and on such ratification he can sue upon the policy [2]

This rule has been applied to insurance law generally in Canadian and American cases but in England it has not been extended to fire or other kinds of insurance [3]

The general rule of ratification is subject to one condition, namely, that a person cannot avail himself of the policy, unless it was intended *bona fide* to protect his interest or to protect the interest generally of the parties who should ultimately appear to be interested Thus, if a policy is effected by *A* to protect the interest of *B* alone and none, *C* will not be permitted to avail himself of such a policy [4] Similarly, where a policy is effected in the name of brokers "and/or as agents", but it does not contain the reference to "persons to whom the same doth, may, or shall appertain", a party interested in the subject matter insured cannot ratify the policy unless the principal, upon whose instructions the insurance was effected, intended to insure the interest of the party in question [5] In deciding the question for whom the insurance was effected, the intention of the principal who gave the instructions and not of the brokers who effected the policy upon those instructions is alone material [6]

The burden of proof that the insurance was intended to cover his interest lies upon the person who alleges such interest [7]

On the question of ratification, *see* also the undermentioned cases [8]

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1 *Grover and Grover* v *Mathews* (1910) 2 K B 401 404 *see* also *Williams* v *North China Insurance Co* (1876) 1 C P D 757

2 *Williams* v *North China Insurance supra Hagedorn* v *Oliverson* (1814) 2 M. and S 485 *Lucena* v *Crawford* (1806) 1 Taunt 325 H L *Routh* v *Thompson* (1811) 13 East 274 *Barlow* v *Leckie* (1819) 4 Moore C P 8

3 See *Ogden* v *Montreal Fire* (1853) U C C P 497 *Gifford* v *Queen Insurance* (1869) 1 Hannay (*New Brunsw*) 432 *Home Insurance* v *Baltimore Co* (1876) 93 U S 527 *Snow* v *Carr* (1878) 32 Am Rep 3 but *see Goulding* v *Norwich Union* (1948) 1 D *See* 526 where the Court of Appeal was equally divided on the question

4 *Boston Fruit Co* v *British and Foreign Marine Insurance Co Ltd* (1906) A C 336 H L. *Yangtsze Insurance Association Ltd* v *Lukmanjee* (1918) A C 585 P C *see* also *Feighley Moxsted & Co* v *Durant* (1901) A C 240 H L.

5 *Graham Joint Stock Shipping Co Ltd* v *Merchants Marine Insurance Co Ltd* (*No* 2) (1923) 1 K B 592 C A affirmed in (1924) A C 294 H L.

6 *Boston Fruit Co* v *British and Foreign Marine Insurance Co Ltd supra Graham Joint Stock Shipping Co Ltd* v *Merchants Marine Insurance Co Ltd supra P Samuel & Co Ltd* v *Dumas*, (1923) 1 K.B 592 C A affirmed on another point in (1924) A C 431

7 *Yangtsze Insurance Association Ltd* v *Lukmanjee supra*

8 *Routh* v *Thompson* (1811) 13 East 274 (a policy made by one without interest for the benefit of all concerned subsequent ratification by one with interest sufficient) *Cory* v *Patton* (1874) L R 9 Q. B 577 (person taking out an insurance and paying premium takes a chance), *Small* v *United Kingdom Marine Mutual Insurance Association* (1892) 2 Q. B 42 on appeal (1893) 2 Q. B 311 C A *Byes* v *Muller* (1897) 3 Com Cas 39 *see* also Halsbury s Laws of England Vol 1 p 173

86 (1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract

Implied obligation varied by agreement or usage

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement

SYNOPSIS

1 *Scope*
2 *Usage, what is*
3 *Usage must be consistent with express terms*
4 *Usage must be general and notorious*
5 *Lloyd's policy*

1 Scope —The section enjoins that any right, duty or liability arising under a contract of marine insurance by implication of law may be negatived or varied by express agreement or by usage where the latter is such as to bind both parties to the contract Sub-section (2) extends the provisions of this section to any right, duty or liability which may be lawfully modified by agreement as declared by this Act It may be noted that it is only the right, duty or liability which arises by implication of law and not where it is expressly provided that can be modified by agreement or usage Similarly, where the Act permits any right, duty or liability to be lawfully modified by agreement that it can be so modified

The general rule is that if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed [1] It is known as novation or *novatio* which takes place when, there being a contract in existence, some new contract is substituted for it either between the same parties or between different parties, the consideration mutually being the discharge of the old contract

But the rule contemplated under this section is that no novation arises by virtue of the negation or variation of the contract by express agreement This section saves such contract from being declared unlawful as being made against the statute, for, where the statute declares that certain right, duty or liability must arise by implication of law, it would be contracting out of the statute

The section corresponds to section 87 of the English Act of 1906

2 Usage, what is —The word "usage" may be defined to mean the habitual conduct of a number of persons who have been in the habit of observing certain principles in their dealings with one another when they mean those principles to apply to such dealings that they will themselves be bound by them and expect others to be so bound In English law a valid usage or custom binds everyone who comes within its domain, whether they know of it or not Thus, persons dealing on the London Stock Exchange are bound by its custom, if valid [2] In jurisprudence "local usages"

1 *See* section 62 Ind an Contract Act (X of 1872)

2 *Grisell v Prince* (1868) L. 36

are known as customs of the country These customs are usually based on contract, express or implied, and the rule of immemorial antiquity does not apply to them, any long-established user supported by notoriety is sufficient [1]

According to Stephen's Commentaries, particular customs to be binding, must be immemorial, continuous, undisputed, reasonable, certain, obligatory, consistent with other customs and not contrary to any Act of Parliament Two theories have developed as to the binding force of customs The first theory is that custom is law by itself and derives its binding force from its own nature The second theory is that custom is not law until its validity has been established by a judicial decision, or by an Act of Parliament and that its validity dates from such decision or Act Maine, Julians, Blackstone, Hale and Savigny are the chief exponents of the first theory, while Austin is the chief exponent of the second theory

3 **Usage must be consistent with express terms** —Any usage to be binding must be consistent with the express terms of the contract of insurance, that is to say, usage cannot contradict what is plain [2] Thus, where an insurance on goods is stated in the policy to be "till discharged and safely landed," evidence of usage must not be allowed to be given to show that that clause means in the particular trade "insured until the ship was moored twenty-four hours in safety" for, to allow this is to make the usage inconsistent with the plain words of the policy [3] It should also be noted that an established usage cannot be excluded by parol agreement [4]

4 **Usage must be general and notorious** —In order that an usage may be binding must be general and notorious, but it need not be a usage of the whole mercantile world that the Court should take judicial notice of [5] The usage of a particular country or a particular class of people does not bind other persons unless it is shown that those other persons are aware of that usage and have contracted with reference to it Where the usage is notorious and general in the trade, it need not be followed invariably at all time by all persons in the trade as both the assured and insurer, in such a case, are presumed to have notice of it and are bound by it [7] Where the usage has existed it is immaterial whether the trade itself is of recent origin [8] The usage must also be reasonable [9]

Regarding custom of insurance business in U S A, see *Commercial Mutual Marine* v *Union Mutual*[10], *Hochbaum* v *The Pioneer* [11]

5 **Lloyd's policy** —In Lloyd's policy the voyage insured is stated by naming the ports of departure and of destination and the course to be followed by the ship on her voyage between the two ports is determined by

1 *Goodwin* v *Roberts* (1875) L R 10 Ex 337, *Tucker* v *Singer* (1883) 8 App Cas 508

2 *Blackett* v *Royal Exchange Assurance Co* (1832) 2 Cr and J 244 249 *per* Lord Lyndhurst C B *Provincial Insurance Co of Canada* v *Leduc* (1874) L R 6 C C 224 *Hall* v *Janson* (1855) 4 E and B 500 *see* also Halsbury's Laws of England Vol II p 193

3 *Parkinson* v *Collier* (1797) 2 Park 8th Ed 653

4 See *Fawkes* v *Lamb* (1862) 31 L J Q B 98 *see* also Arnould on Marine Insurance 14th Ed sec 108 57

5 *Vallance* v *Dewar* (1803) 1 Camp 503

6 *Bartlett* v *Pentland* (1830) 10 B and C 760 770 *per* Lord Tenterden C J *Gobay* v *Lloyd* (1825) 3 B and C. 793, *Scott* v *Irving* (1830) 1 B and Ad 605, *Sweeting* v *Pearce* (1861) 9 C B N S 534, *Matveeff* v *Crosfield* (1903) 8 Com Cas 120 *Stewart* v *Aberdein* (1838) 4 M and W 211 (plaintiff a knowledge of Lloyd's usage was proved) but see *McCowan Lumber and Export Co* (*Incorporated*) v *Pacific Marine Insurance Co Ltd* (1922) 38 T L R 901 *Provincial Insurance Co Ltd* v *Crowder* (1927) 27 Ll L. Rep 28

7 *Vallance* v *Dewar* (1803) 1 Camp 503

8 See *Noble* v *Kennoway* (1780) 2 Dough K. B 510

9 *Oggier* v *Jennings* (1800) 1 Camp 505n *Robinson* v *Mollett* (1875) L. R 7 H L 802

10 (1856) 19 How 318

11 (1933) 1 W W R. 403 (Can)

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SYNOPSIS

1 *Scope*
2 *Slip, meaning of*
3 *Covering note, meaning of*
4 *Admissibility in evidence*

1 Scope—This section permits reference to the slip or covering note in any legal proceeding where there is a duly stamped policy [1]

The section corresponds to section 89 of the English Act of 1906

2 Slip, meaning of—*See* Notes under section 28 *supra*

3 Covering note, meaning of—Where the applicant wants immediate protection pending acceptance of his proposal and before the issue of a formal policy and the insurer, in such a case, gives the applicant a formal document which is known as a "cover note"[2] Such a note is a temporary or provisional contract of insurance, quite distinct from the contract embodied in the policy, and the fact the assured changes his mind and decides to negotiate with another company does not affect the cover already given him by such a note [3] The conditions of the policy are not therefore binding upon the assured unless they are incorporated expressly or by reference in the cover-note and they are generally so done [4] The cover-note usually remains in force for a limited period of time or until a policy is delivered, unless meanwhile the insurer gives notice to the assured that his proposal is not acceptable to the insurer [5]

4 Admissibility in evidence—This section makes a slip or a covering note, although it is not stamped, admissible in evidence provided there is a duly stamped policy [6] Where there is no stamped policy, neither the slip nor the covering note can be referred to in any legal proceeding

89 The Central Government may, by notification in the official *Gazette*, direct that the provisions of this Act shall, in their application to contracts of marine insurance relating to any class of ships exclusively used in inland navigation, be subject to such conditions, exceptions and modifications as it may specify in the notification

Power to apply Act with modifications etc in certain cases

The section confers powers on the Central Government to apply the provisions of this Act with such conditions, exceptions and modifications to any class of ships exclusively used in inland navigation in their application to contracts of marine insurance This Act applies to marine adventure, *i e*, applicable to perils of the sea Before the application of the Act, the Central Government has the duty to publish in the official *Gazette*, the provisions to be so made applicable whether with modifications, conditions or exceptions and if so, the modifications, conditions or exceptions have also to be stated

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1 *See* Notes under sections 23 and 24 *supra*
2 See *Thompson* v *Adams* (1889) 23 Q B D 361 366 *per* Mathew J , *Re Yager and Guardian* [1912] 108 T L R 38 40
3 *Mackie* v *European Assurance* (1 L T 102 *Re Coleman s Depositories* (190 798, *Symington* v *Union Insuran.* (*No* 2) (1928) 141 L T 48 *Queen Insurance* v *Parsons* (1811) 7 App Cas 96
5 See *Mackie* v *European Assurance supra Scottish Employers Insurance* (1901) 229 *Pacific Insurance Co* (1871) 674 678 *see* also Notes and 24, *supra*

The section is intended to encourage insurance even in case of inland navigation where maritime perils are not concerned

Certain provisions to override provisions of Transfer of Property Act 1882

90 Nothing in clause (c) of section 6 of the Transfer of Property Act, 1882, shall affect the provisions of sections 17, 52, 53 and 79

This section saves the provisions of sections 17, 52, 53 and 79 of this Act from being in conflict with the provision in clause (c) of section 6 of the Transfer of Property Act, 1882, which provides that a mere right to sue cannot be transferred This clause had also been made inapplicable to transfer of marine policies which can be transferred before or after loss by virtue of sections 130A and 135A of the Transfer of the Property Act, 1882, inserted by the Transfer of Property (Amendment) Act, 1944, now repealed by section 92 of this Act (*see* also Notes under sections 52 and 53, *supra*)

Savings

91 The rules of law, including the law merchant, which applied to contracts of marine insurance immediately before the commencement of this Act, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance

The section permits the rules of law, including the law merchant, to continue to apply to contracts of marine insurance which were applied to such insurance immediately before the commencement of this Act provided such rules of law, including the law merchant, are not inconsistent with the express provisions of this Act

Section 91 (2) of the English Marine Insurance Act, 1906, also expressly provides that the rules of the common law, including the law merchant, save in so far as they are inconsistent with express provisions of the Act, are to continue to apply to contracts of Marine Insurance

Repeals

92 Sub-sections (1), (2) and (3) of section 7 of the Indian Stamp Act, 1899 (IV of 1899) and sections 130A and 135A of the Transfer of Property Act, 1882 (IV of 1882) are hereby repealed

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SCHEDULE

FORM OF POLICY

(*See* section 24)

BE IT KNOWN THAT [Here insert the name or names of the party for whom or by whom the policy is effected] as well in [Here insert the name or names of the party for whom or by whom the policy is effected] own name as for and in the name and names of all and every other person or persons to whom the same doth may, or shall appertain, in part or in all doth make assurance and cause [Here insert the name or names of the party for whom or by whom the policy is effected] and them, and every of them,

to be insured lost or not lost,[1] at and from[2] upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat and other furniture, of and in the said ship or vessel[3] called the [Here insert the name of ship and in the said ship or vessel for this present voyage [Here insert the name of ship and master] whereof is master for this shall go for master in the said ship or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called, beginning the adventure (this is the clause describing the commencement, continuance and termination of the risk) upon the said goods and merchandises from the loading thereof aboard the said ship, [ ] upon the said ship, etc [and so shall continue and endure, during her abode there, upon the said ship, etc [ ] And further, until the said ship with all her ordnance, tackle, apparel, etc, and goods and merchandises whatsoever shall be arrived at [ ] upon the said ship, etc, until she hath moored at anchor twenty four hours in good safety, and upon the goods and merchandises, until the same be there discharged and safely landed[4] And it shall be lawful for the said ship, etc, in this voyage to proceed and sail to and touch and stay[5] at any ports or places whatsoever without prejudice to this insurance The said ship, etc, goods and merchandise, etc, for so much as concerned the assured by agreement between the assured and assurers in this policy, are and shall be [ ] valued at

Touching the adventures and perils which we, the assurers are contented to bear and do take upon us the voyage, they are of the seas, men of war, fire, enemies, pirates,[6] rovers, thieves,[7] jettions, letters of mart and counter mart, surprisals, takings at sea, arrests, restraints, and detainments of all kinds, princes, and people,[8] of what nation, condition, or quality so ever, barratry[9] of the master and mariners, and of all other perils[10] losses and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods[11] and merchandises, and ship, etc, or any part thereof And in case of any loss or misfortune, it shall be lawful to the assured, their factors servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards and recovery of the said goods and merchandises and ship,[12] etc, or any part thereof, without prejudice to this insurance,[13] to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured

And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment[14] And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, administrators and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of [ ]

In witness whereof we, the assurers, have subscribed our names and sums assured in

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1 *See* R 1 Rules for construction of policy
2 *See* R 3 *ibid*
3 *See* R 15 *ibid*
4 *See* R 5 *ibid*
5 *See* R 6 *ibid*
6 *See* R 8 *ibid*
7 *See* R 9 *ibid*
8 *See* R 10 *ibid*
9 *See* R 11 *ibid*
10 *See* R 12 *ibid*
11 *See* R 17 *ibid*
12 *See* R 15 *ibid*
13 This is the suing and labouring clause *see* Notes under section 78 *supra*
14 This is the waiver clause as to abandonment *see* Notes under sections 62 and 63 *supra*

MEMORANDUM *N B*—Corn, fish, salt, fruit, flour and seed are warranted free from average, unless general[1] or the ship be stranded[2] Sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five per cent, and all other goods, also the ship and freight,[3] are warranted free from average, under three per cent, unless general, or the ship be stranded[4]

The form of the policy given in the Schedule is more or less similar to the form embodied in Schedule 1 of the Marine Insurance Act, 1906,[5] and is generally known as the Lloyd's S G policy The various blanks in the policy are generally filled in by written words, but special clauses are also inserted to meet the exigencies of commerce[6] A standard form of the Institute of London underwriters known as the Institute Collision or running down clause is reproduced below

It is further agreed that if the vessel hereby insured shall come into collision with any other vessel and the assured shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, the underwriters will pay the assured such proportion of three fourths of such sum or sums so paid as their respective subscriptions hereto bear to the value of the vessel hereby insured, provided always that their liability in respect of any one such collision shall not exceed their proportionate part of three-fourths of the value of the vessel hereby insured, and in cases in which the liability of the vessel has been contested, or proceedings have been taken to limit liability with the consent in writing of the underwriters, they will also pay a like proportion of three-fourths of the costs which the assured shall thereby incur or be compelled to pay, but when both vessels are to blame, then unless the liability of the owners of one or both of such vessels becomes limited by law, claims under this clause shall be settled on the principle of cross liabilities as if the owners of each vessel had been compelled to pay to the owners of the other of such vessel, such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision

Provided always that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages and similar structures or any goods or property thereon or on land, consequent upon such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury

The principle of cross liabilities has been stated in *London S S Owners' Insurance Co* v *Grampian S S Co*,[7] and *Stoomvaart Maatschappy Nederland* v *Peninsular and Oriental Steam Navigation Co* (*The Khedive*)[8] But in *Young* v *Merchants' Marine Insurance Co, Ltd*,[9] the claim of the re-insurers to be subrogated to the sum settled between the insurers and the assured on the principle of cross-liabilities was disallowed on the ground that the payment thereunder was purely notional It may be noted that the insurers remain liable under a running down clause even if the collision occurs during a

1 *See* R 13, Rules for construction of policy
2 *See* R 14 *ibid*
3 *See* Rr 15 and 16, *ibid*
4 *See* R 14 *ibid*
5 6 Ed 7 C 41
6 *See* Arnould on Marine Insurance, 14th Ed Appendix 2 for selection of these clauses
7 (1890) 24 Q B D 663 C A
8 (1882) 7 App Cas 795, H
9 (1932) 2 K B 705, C A

warlike operation and the policy contains a f c and s clause.[1] *See* also the undermentioned case [2]

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require

1 Lost or not lost—Where the subject-matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches, at such time the assured was aware of the loss, the insurer was not

This rule corresponds to rule 1 of Schedule 1 of the English Act of 1906 [3]

2 From—Where the subject matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured [4]

3 At and from—(*a*) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately

(*b*) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival

(*c*) Where a chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety

(*d*) Where freight, other than chartered freight is payable without special conditions and is insured "at and from" a particular place, the risk attaches *pro rata*, as the goods or merchandise are shipped, provided that if there be a cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo

The rule corresponds to rule 3 of Schedule 1 of the English Act of 1906

This rule speaks of when the risk attaches (i) where the insurance is on ship "at and from" a particular place, (ii) where the insurance is on chartered freight "at and from" a particular place, and (iii) where the insurance is on freight other than chartered freight "at and from" a particular place

Attaching of risk when the insurance is on ship—*See* Notes under section 44, *supra*

Attaching of risk when the insurance is on chartered freight—In policies on chartered freight, the commencement of the risk may be made to depend on a certain event, such as, the loading of the goods on boardship at a certain port or simply from the loading of the vessel In such cases the risk

1 *Addaids S S Co Ltd* v *Attorney General* (1926) A C 172 H L.

2. *Taylor* v *Dewar* (1864) 5 B & S 58 liability of the underwriters under a different clause

3 *See* Notes under section 8 *supra*

4 *See* notes under section 44 *supra*

does not attach until the happening of the specified event [1] The chartered freight may be at risk before the beginning of the voyage on which it is to be carried provided suitable wording is employed [2]

Attaching of risk when the insurance is on freight —Two conditions must have to be fulfilled before or at the time of the loss in order that a policy may cover freight on goods not shipped—(i) the goods must belong to the shipowner or there must be a binding contract with some other person to ship them, this rule is in accord with the decided cases[3], (ii) the goods must be in readiness to be shipped and the ship must be also ready to receive them [4]

4 **From the loading thereof** —Where goods or other movables are insured "from the loading thereof," the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship

That a voyage policy is retrospective to the loading of the goods is inherent in every policy in the form scheduled to this Act This is evident from the language of the policy—" beginning the adventure upon the said goods and merchandises 'from' the loading thereof aboard the said ship "[5]

5 **Safely landed** —Where the risk on goods or other movables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed, the risk ceases

The goods are landed in the customary manner when they are delivered on shores at the ordinary quays, wharves or customary landing-places within the limits of the port of discharge [6] Where, on account of shallowness of water, it is necessary to engage smaller craft or men to carry the goods from the ship to the shore, the underwriters are liable for any loss which may happen to the goods in the course of their being so carried [7] The extent of reasonable time within which the goods are to be landed will depend upon the nature and usages of trade on which the ship is engaged, the object of the adventure and the circumstances existing at the port of discharge [8]

6 **Touch and stay** —In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination

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1 *Buckell* v *West of England Marine Insurance Co Ltd* (1871) 25 L T 729 distinguished in *Hydarnes S S Co* v *Indemnity Mutual Marine Assurance Co*, (1895) 1 Q B 500 C A *Hopper* v *West Marine Insurance Co*, (1882) 46 L T 107 *Jones* v *Neptune Marine Insurance Co* (1874) L R 7 Q B 702

2 *Rankin* v *Potter* (1873) L R 6 H L 83 *Barter* v *Fleming* (1869) L R 5 Q B 59 *see* also Arnould on Marine Insurance 14th Ed section 513

3 See *Montgomery* v *Eggington* (1784) 3 Term Rep 362 *Flint* v *Flemyng* (1830) 1 B & Ad 45 *Forbes* v *Aspin* (1811) 13 East 323 *Patrick* v *Lames* (1813) 3 Camp 441

4 See *Parks* v *Hebson* (1820) cited in 2 Brod & Bing at p 320 *Harrey* v *Miller* (1825) 4 B & C 538, *Dewar* v *J Anson* (1839) 5 Bing N C 519, *Truscott* v *Christie* (1820) 2 Brod & Bing at p 320

5 *See* also *Marine Insurance Co Ltd* v *Grimmer* (1944) 2 All E R 197 C A , *See* also Notes under sect on 27 *supra*

6 *Hyde* v *Trent and Mersey Navigation Co* (1793) 5 Term Rep 389 *Bourne* v *Gallifle* (1841) 2 Man & G 643 Ex Ch varied, (1844) 7 Man & G 850 H L.

7 *Pilly* v *Royal Exchange Assurance Co* (1757) 1 Burr 341 *Law* v *Anson* (1866) L R 1 C P 412 *Rucker* v *London Assurance Co* (1781) 2 Dos and P 452n *Hurry* v *Royal Exchange Assurance Co* (1801) 2 Dos and P 449 *Stewart* v *Bell* (1812 and Ald 238

8 *See* Halsbury's Laws of Eng pp 202 203 208 212 and pp 60-61

warlike operation and the policy contains a f c and s undermentioned case [1]

RULES FOR CONSTRUCTION OF P

The following are the rules referred to by this A of a policy in the above or other like form, where otherwise require

1 **Lost or not lost** —Where the subject matter lost" and the loss has occurred before the contract attaches, at such time the assured was aware of the not

This rule corresponds to rule 1 of Schedule 1 of t

2 **From** —Where the subject matter is insure place, the risk does not attach until the ship starts on t

3 **At and from** —(*a*) Where a ship is inst particular place, and she is at that place in good sa is concluded, the risk attaches immediately

(*b*) If she be not at that place when the contrac attaches as soon as she arrives there in good safety otherwise provides it is immaterial that she is covere a specified time after arrival

(*c*) Where a chartered freight is insured "at a place, and the ship is at that place in good safety wh cluded, the risk attaches immediately If she be not i is concluded, the risk attaches as soon as she arrives t

(*d*) Where freight, other than chartered freigh special conditions and is insured "at and from" a p attaches *pro rata* as the goods or merchandise are s there be a cargo in readiness which belongs to the some other person has contracted with him to ship, t as the ship is ready to receive such cargo.

The rule corresponds to rule 3 of Schedule 1 of t

This rule speaks of when the risk attaches (i is on ship 'at and from" a particular place, (i on chartered freight 'at and fro " a particular pla insurance is on freight other than chartered fre particular place

A tacking of risk when the interest is on ship —See supra

Attaching of risk when the interest is on charte on chartered freight, the commencement of the ri on a certain event, such as the loading of the g or a portion supply from the loading of the vessel

1 *Elbi v S Co* [ ] A C [ ] H L [illegible] [illegible] Council [illegible] Law [illegible] [illegible] [illegible]

does not attach until the happening of the specified event [1] The chartered freight may be at risk before the beginning of the voyage on which it is to be carried provided suitable wording is employed [2]

Attaching of risk when the insurance is on freight —Two conditions must have to be fulfilled before or at the time of the loss in order that a policy may cover freight on goods not shipped—(i) the goods must belong to the shipowner or there must be a binding contract with some other person to ship them, this rule is in accord with the decided cases [3], (ii) the goods must be in readiness to be shipped and the ship must be also ready to receive them [4]

4 **From the loading thereof** —Where goods or other movables are insured "from the loading thereof," the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship

That a voyage policy is retrospective to the loading of the goods is inherent in every policy in the form scheduled to this Act This is evident from the language of the policy—" beginning the adventure upon the said goods and merchandises 'from' the loading thereof aboard the said ship "[5]

5 **Safely landed** —Where the risk on goods or other movables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed, the risk ceases

The goods are landed in the customary manner when they are delivered on shores at the ordinary quays, wharves or customary landing-places within the limits of the port of discharge [6] Where, on account of shallowness of water, it is necessary to engage smaller craft or men to carry the goods from the ship to the shore, the underwriters are liable for any loss which may happen to the goods in the course of their being so carried [7] The extent of reasonable time within which the goods are to be landed will depend upon the nature and usages of trade on which the ship is engaged, the object of the adventure and the circumstances existing at the port of discharge [8]

6 **Touch and stay** —In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination

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1 *Beckett* v *West of England Marine Insurance Co Ltd* (1871) 25 L T 729 distinguished in *Hydarnes S S Co* v *Indemnity Mutual Marine Assurance Co*, (1895) 1 Q B 500 C A *Hopper* v *West Marine Insurance Co* (1882) 46 L T 107 *Jones* v *Neptune Marine Insurance Co* (1872) L R 7 Q B 202

2 *Rankin* v *Potter* (1873) L R 6 H L 83 *Baxter* v *Fleming* (1869) L R 5 Q B 59 *see* also Arnould on Marine Insurance 14th Ed section 513

3 See *Montgomery* v *Eggington* (1784) 3 Term Rep 362 *Flint* v *Flemyng* (1830) 1 B & Ad 45 *Forbes* v *Aspinall* (1814) 13 East 323 *Parry* v *Lames* (1813) 3 Camp 441

4 See *Parks* v *Hebson* (1820) cited in 2 Brod & Bing at p 329 *Harris* v *Miller* (1825) 4 B & C 538 *Dewar* v *Jason* (1839) 5 Bing N C 519, *Truscott* v *Christie* (1820) 2 Brod & Bing at p 320

5 *See* also *Marine Insurance Co Ltd* v *Grimmer* (1944) 2 All E R 197 C A, *See* also Notes under sect on 27 *supra*

6 *Hyde* v *Trent and Mersey Navigation Co*, (1793) 5 Term Rep 389 *Bourne* v *Gatliffe* (1841) 2 Man & G 643 Ex Ch varied, (1844) 7 Man & G 850 H L

7 *Pilly* v *Royal Exchange Assurance Co*, (1757) 1 Burr 341 *Law* v *Nixon* (1864) L R 1 C P 412 *Rucker* v *London Assurance Co* (1784) 2 Bos and P 432n *Harry* v *Royal Exchange Assurance Co* (1801) 2 Bos and P 430 *Stewart* v *Bell* (1821) 5 B and Ald 238

8 *See* Halsbury's Laws of England, Vol 11 pp 202 203 208 212 and *see* Vol 22 pp 60 61

warlike operation and the policy contains a f c and s clause [1] *See* also the undermentioned case [2]

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of a policy in the above or other like *form, where the context does not* otherwise require

1 Lost or not lost —Where the subject matter is insured "lost or not lost" and the loss has occurred before the contract is concluded, the risk attaches, at such time the assured was aware of the loss, the insurer was not

This rule corresponds to rule 1 of Schedule 1 of the English Act of 1906 [3]

2 From —Where the subject matter is insured "from" a particular place, the risk does not attach until the ship starts on the voyage insured [4]

3 At and from —(*a*) Where a ship is insured "at and from" a particular place, and she is at that place in good safety when the contract is concluded, the risk attaches immediately

(*b*) If she be not at that place when the contract is concluded, the risk attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival

(*c*) Where a chartered freight is insured "at and from" a particular place, and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety

(*d*) Where freight, other than chartered freight is payable without special conditions and is insured "at and from" a particular place, the risk attaches *pro rata*, as the goods or merchandise are shipped, provided that if there be a cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo

The rule corresponds to rule 3 of Schedule 1 of the English Act of 1906 This rule speaks of when the risk attaches (*i*) where the insurance is on ship "at and from" a particular place, (*ii*) where the insurance is on chartered freight "at and from" a parti cular place, and (*iii*) where the insurance is on freight other than chartered freight "at and from" a particular place

Attaching of risk when the insurance is on ship —*See* Notes under section 44, *supra*

Attaching of risk when the insurance is on chartered freight —In policies on chartered freight, the commencement of the risk may be made to depend on a certain event, such as, the loading of the goods on boardship at a certain port or simply from the loading of the vessel In such cases the risk

1 *Adelaide S S Co Ltd* v *Attorney General* (1926) A C 172 H L

2. *Taylor* v *Dewar* (1864) 5 B & S 58 liability of the underwriters under a different clause

3 *See* Notes under section 8, *supra*

4 *See* notes under section 44 *supra*

does not attach until the happening of the specified event [1] The chartered freight may be at risk before the beginning of the voyage on which it is to be carried provided suitable wording is employed [2]

Attaching of risk when the insurance is on freight —Two conditions must have to be fulfilled before or at the time of the loss in order that a policy may cover freight on goods not shipped—(*i*) the goods must belong to the shipowner or there must be a binding contract with some other person to ship them, this rule is in accord with the decided cases[3], (*ii*) the goods must be in readiness to be shipped and the ship must be also ready to receive them [4]

4 From the loading thereof —Where goods or other movables are insured "from the loading thereof," the risk does not attach until such goods or movables are actually on board, and the insurer is not liable for them while in transit from the shore to the ship

That a voyage policy is retrospective to the loading of the goods is inherent in every policy in the form scheduled to this Act This is evident from the language of the policy—" beginning the adventure upon the said goods and merchandises 'from' the loading thereof aboard the said ship "[5]

5 Safely landed —Where the risk on goods or other movables continues until they are "safely landed," they must be landed in the customary manner and within a reasonable time after arrival at the port of discharge, and if they are not so landed, the risk ceases

The goods are landed in the customary manner when they are delivered on shores at the ordinary quays, wharves or customary landing-places within the limits of the port of discharge [6] Where, on account of shallowness of water, it is necessary to engage smaller craft or men to carry the goods from the ship to the shore, the underwriters are liable for any loss which may happen to the goods in the course of their being so carried [7] The extent of reasonable time within which the goods are to be landed will depend upon the nature and usages of trade on which the ship is engaged, the object of the adventure and the circumstances existing at the port of discharge [8]

6 Touch and stay —In the absence of any further licence or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination

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1 *Beckett* v *West of England Marine Insurance Co Ltd* (1871) 25 L T 729 distinguished in *Hydarnes S S Co* v *Indemnity Mutual Marine Assurance Co*, (1899) 1 Q B 500 C A *Hopper* v *West Marine Insurance Co*, (1882) 46 L T 107 *Jones* v *Neptune Marine Insurance Co* (1872) L R 7 Q B 702

2 *Rankin* v *Potter* (1873) L R 6 H L 83 *Barter* v *Fleming* (1869) L R 5 Q B 59 *see* also Arnould on Marine Insurance 14th Ed section 513

3 See *Montgomery* v *Eggington* (1784) 3 Term Rep 362 *Flin* v *Fleming* (1830) 1 B & Ad 45 *Forbes* v *Aspinall* (1811) 13 East 323 *Patrick* v *Eames* (1813) 3 Camp 441

4 See *Parke* v *Hebson* (1820) cited in 2 Brod & Bing at p 320 *Harris* v *Miller* (1625) 4 B & C 538 *Dewar* v *Jansen* (1839) 5 Bing N C 519, *Truscott* v *Christie* (1820) 2 Brod & Bing at p 320

5 *See* also *Marine Insurance Co Ltd* v *Grimmer* (1944) 2 All E R 197 C A, *See* also Notes under sect on 27 *supra*

6 *Hyde* v *Trent and Mersey Navigation Co*, (1793) 5 Term Rep 389 *Bourne* v *Gatliffe* (1841) 2 Man & G 643 Ex Ch varied, (1844) 7 Man & G 850 H L

7 *Pilly* v *Royal Exchange Assurance Co*, (1757) 1 Burr 341 *Law* v *Anson* (1866) L R 1 C P 412 *Rucker* v *London Assurance Co* (1781) 2 Dos and P 432n *Harry* v *Roy l Exchange Assurance Co* (1801) 2 Dos and P 430 *Stewart* v *Bell*, (1824) 5 B and Ald 238

8 *See* Halsbury's Laws of England Vol 11 pp 202 203 209 212 and *see* Vol 22 pp 60-61

This rule corresponds to rule 6 of Schedule 1 of the English Act of 1906

Touch and stay —*See* Notes under sections 47 to 51, *supra*

7 **Perils of the seas** —The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas It does not include the ordinary action of the winds and waves

This rule corresponds to rule 7 of Schedule 1 of the English Act of 1906

Perils of the seas —*See* Notes under section 2 (*h*)

8 **Pirates** —The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore

This rule corresponds to rule 8 of Schedule 1 of the English Act of 1906

Revolutionaries organising and carrying out an armed expedition against the Government are not pirates within the meaning of that term in the policy [1]

9 **Thieves** —The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers

This rule corresponds to rule 9 of Schedule 1 of the English Act of 1906

Robbery accompanied by violence and committed by strangers, and not by the crew, is a loss by rovers or thieves under the policy [2] But where ship-wrecked goods are plundered by wreckers on shore, it is loss by the perils of the seas [3]

10 **Restraint of princes** —The term "arrests, etc , of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process

This rule corresponds to rule 10 of Schedule 1 of the English Act of 1906

By the word "people" is meant not mobs or multitudes of men, but the ruling power of the country, whatsoever that may be [4] For a restraint the use of actual physical force is not necessary A prohibitory order from any governing power or by any municipal law is sufficient [5] It is not a restraint of princes where the order of the Government is *ultra vires* and there

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1 *Bolivia Republic* v *Indemnity Mutual Marine Assurance Co Ltd* (1909) 1 K. B 785 C A See *Re Piracy Jure Gentium* (1934) A C 586 P C (1934) All E R Rep 506 (persons may be pirates according to international law if they commit acts which a e otherw se piratical with a view to robbery e en though the robbery itself be frustrated)

2 *Hartford* v *Maynard* (1785) 1 Park 8th Edn 36

3 *Bondrett* v *Hentigg* (1816) Holt N P 149, *see* also *Fabrigas de Products Chimiques* v *Large* (1923) 1 K B 203 (breaking open the doors of an unattended warehouse and stealing the goods constitute theft)

4 *Nesbitt* v *Lushington* (1792) 4 Term Rep 783 *see* also *Societe Belge Des Betons Societe Anonyme* v *London and Lancashire Assurance Co Ltd* (1938) 2 All E R 305 (Spanish Civil War)

5 *Miller* v *Law Accident Insurance Co* (1903) 1 K B 712 C A *British and Foreign Marine Co* v *Samuel Sanday & Co* (1916) A C 650 H L *Fooks* v *Smith* (1924) 2 K. B 508 512

is no threat of force[1] The essential difference between capture and arrest lies in this that in the former the subject-matter of insurance is forcibly taken away in time of war with a view to taking as prize while in the latter, the subject-matter is temporarily detained with a view to release it ultimately or to repay its value[2]

11 Barratry—The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

This rule corresponds to rule 11 of Schedule 1 of the English Act of 1906

The following are some instances of barratry

(i) Sailing out of port without paying port dues or in breach of an embargo, or wilful breach of blockade with the result that the ship is seized or other loss is sustained[3],

(ii) fraudulently running away with the ship by the captain or by members of the crew[4], barratry by master', barratry of crew in conjunction with prisoners-of-war,

(iii) deviation for a fraudulent or criminal purpose[7]

But the following has been held not to be barratrous act.

(i) wilful default within the Merchant Shipping Act, 1854, or non observance of collusion regulations[8],

(ii) ignorance or incompetence of the master in not understanding the meaning of instructions or of carrying them into effect[9]

It may be noted that the commission of a crime is not an essential feature of barratry[10] But the act is barratrous where it is induced by motive of benefit to the master himself or malice to the owners, or disregard of laws which the master is bound to obey[11]

12 All other perils—The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy

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1 *Russian Bank for Foreign Trade* v *Excess Insurance Co, Ltd* (1918) 2 K B 123 (affirmed without deciding this point (1919) 1 K B 39 C A

2. Marshall on Marine Insurance 4th Ed p 394

3 *Lverth* v *Hammam*, (1815) 6 Taunt 375, *Goldschmidt* v *Whitmore*, (1811) 2 Taunt 508, *Earle* v *Rowcroft*, (1806) 7 East 126, *Robertson* v *Ewer* (1786) 1 Term Rep 127 *Stamma* v *Brown* (1742) 2 Stra 1173

4 *Falkner* v *Ritchie* (1814) 2 M and S 290, *Brown* v *Smith* (1813) 1 Daw 349 H L, *Dixon* v *Reid* (1822) 5 B and Ald 597, *Soares* v *Thornton* (1817) 7 Taunt 617, *Roscow* v *Corson* (1819) 8 Taunt 684, *Hibbert* v *Martin* (1808) 1 Camp 538.

5 *Hucks* v *Thornton* (1815) Holt N P 30

6 *Merstrand Fishing Co, Ltd* v *Barr*, (1937) 1 All E R. 158, *Republic of China, China Merchants Steam Navigation Co, Ltd and United States of America* v *National Union Fire Insurance Co of Pittsburg, Pennsylvania and American International Underwriters, Ltd* (1957) 1 Lloyd s Rep 428

7 *Vallejo* v *Wheeler* (1774) 1 Cowp 143, *Ross* v *Hunter* (1790) 4 Term Rep 33

8 *Grill* v *General Iron Screw Collier Co* (1868) L R 3 C P 476 Ex. Ch

9 *Pitt* v *Royal Exchange Assurance Co* (1798) 7 Term Rep 505 *Tedd* v *Ritchie* (1816) 1 Stark 240 *Bottomley* v *Bovill* (1826) 5 B and C. 210, *Bradford* v *Levy* (1825) Ry M 331

10 *Compania Naviera Basti* v *Henry Hosegood & Co Ltd* (1938) 2 All E R 189

11 *Earle* v *Rowcroft* (1806) 8 East 126 *Heyman* v *Parish*, (1809) 2 Camp 149

1906 This rule corresponds to rule 12 of Schedule 1 of the English Act of

The term "all other perils" does not include any perils which are not of a marine character nor of a character incident to a ship as such [1]

13 Average unless general—The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges"

1906 This rule corresponds to rule 13 of Schedule 1 of the English Act of

The term "unless general" means that the insurer is not liable for a partial loss of or damage to the subject-matter insured, unless the loss or damage is in the nature of general average, but that for losses of the latter character he is liable [2]

14 Stranded—Where the ship has stranded, the insurer is liable for the excepted losses although the loss is not attributable to the stranding, provided that when the stranding takes place, the risk has attached and, if the policy be on goods, that the damaged goods are on board

This rule corresponds to rule 14 of Schedule 1 of the English Act of 1906, which adopts the decisions in *Burnett* v *Kensington*[3], *Bowring* v *Elmslie*[4], *Thames and Mersey Marine Insurances Co* v *Pitts, Son and King*[5], *Roux* v *Salvador*[6], *The Alsace Lorraine*[7] There is stranding (i) where the taking of the ground does not happen solely from those natural causes which are necessarily incidental to the ordinary course of navigation in which the ship is engaged, but from some accidental or extraneous cause[8], or (ii) where by temporary circumstances the bottom of a harbour is in a condition different from its ordinary state and a vessel takes the ground differently from which it is intended to take [9]

But there is no stranding where the ship takes the ground in the ordinary course of navigations [10]

15 Ship—The term "ship" includes the hull material and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery boilers, and coals and engine stores, if owned by the assured and also in the case of a ship driven by power other than steam, the machinery and fuels and engine stores, if owned by the assured

This rule corresponds to rule 15 of Schedule 1 of the English Act of 1906 For the meaning of the term "ship," *see* Notes under section 2 (*h*) and section 18, *supra*

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1 *Thames and Mersey Marine Insurance Co* v *Hamilton Fraser & Co* (1887) 12 App Cas 484 *see* also *Canada Rice Mills Ltd* v *Union Marine and General Insurance Co Ltd* (1941) A C 55 P C (1940) 4 All E R 169 *s e* also Notes under S 2 (*h*)

2 *Wilson* v *Smith* (1764) 3 Burr 1550 *Price & Co* v *All Ships Small Damage Insurance Association* (1889) 22 Q B D 580 C A , *see* also Notes under S 2 (*h*)

3 (1797) 7 Term Rep 210

4 (1790) 7 Term Rep 216

5 (1893) 1 Q B 476

6 (1835) 1 Bing N C 526 on appeal (1836) 3 Bing N C 266

7 (1893) P 209

8 *Rayner* v *Godmond* (1821) 5 B and Ald 225 *Barrow* v *Bell* (1825) 4 B and C 736 *Bishop* v *Pentland* (1827) 7 B and C 219 *Carruthers* v *Sydebotham* (1815) 4 M and S 77 , *The Lapwing* (1940) P 112

9 *De Mattos* v *Saunders* (1872) L R 7 C P 570 , *Letchford* v *Oldham* (1880) 5 Q B D 538 C A

10 *Wills* v *Hopwood* (1832) 3 B and Ad 20 , *Corcoran* v *Gurney* (1853) 1 E and B 456 ; *Fingsford* v *Marshall* (1832) 8 Bing 459

16 Freight —The term "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or mov ables as well as freight payable by a third party, but does not include passage money

This rule corresponds to rule 16 of Schedule 1 of the English Act of 1906

The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage money [1]

17 Goods —The term "goods" means goods in the nature of mer chandise, and does not include personal effects or provisions and stores for use on board

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods

This rule corresponds to rule 17 of Schedule 1 of the English Act of 1906

The term "goods" includes money, bullion or jewels when put on board as merchandise but not jewels, ornaments, cash, etc , when carried as belongings to passengers on board [2] It does not seem to include bank notes or bill of exchange [3] A usage in the trade in which the goods are carried to carry them on deck is a "usage to the contrary" within the meaning of this rule [4], a usage of the insurance world to insure deck cargo or living animals under the general designation would also be a "usage to the contrary "[5]

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1 See *Winter* v *Haldimand* (1831) 2 B and Ad 649, *Forbes* v *Aspinall* (1811) 13 East 323 *Flint* v *Flemyng* (1830) 1 B and Ad 45 *see* also *King* v *Methen* (1907) 24 T L R 145 C A (freight meant freight, which at the time of the loss the assured had paid or had become liable to pay and not payable on delivery of the cargo at the port of destination) *Gulf and Southern S S Co (Incorporated)* v *British Traders Insurance Co Ltd* (1930) 1 K B 451 (freight includes one in process of being earned) ; *see* also Notes under sections 14 and 70, *supra*

2 *Brown* v *Stappleton* (1827) 4 Bing 119

3 *Palmer* v *Pratt*, (1824) 2 Bing 185 pp 191 192 for insurance of personal effects see *Duff* v *Mackenzie* (1857) 3 C B N S 16

4 *British and Foreign Marine Insurance Co Ltd* v *Gaunt* (1921) 2 A C 41 H L.

5 *Ibid see* also *Hood* v *West End Motor Car Packing Co* (1917) 2 K B 38 C. A insurance of deck cargo for meaning of deck load see *G H Renton & Co Ltd* v *Cornhill Insurance Co Ltd* (1933) 149 L. T 280 *see* also Notes under sections 18 and 42 *supra*

This rule corresponds to rule 12 of Schedule 1 of the English Act of 1906

The term "all other perils" does not include any perils which are not of a marine character nor of a character incident to a ship as such [1]

13 Average unless general —The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges"

This rule corresponds to rule 13 of Schedule 1 of the English Act of 1906

The term "unless general" means that the insurer is not liable for a partial loss of or damage to the subject-matter insured, unless the loss or damage is in the nature of general average, but that for losses of the latter character he is liable [2]

14 Stranded —Where the ship has stranded, the insurer is liable for the excepted losses although the loss is not attributable to the stranding provided that when the stranding takes place, the risk has attached and the policy be on goods, that the damaged goods are on board

This rule corresponds to rule 14 of Schedule 1 of the English 1906, which adopts the decisions in *Burnett* v *Kensington*[3], *Bowring* v *Thames and Mersey Marine Insurance Co* v *Pitts, Son and King*[5], *Roux* v *The Alsace Lorraine*[7] There is stranding (*i*) where the taking of t does not happen solely from those natural causes which are nece dental to the ordinary course of navigation in which the ship is r from some accidental or extraneous cause[8], or (*ii*) where by t cumstances the bottom of a barbour is in a condition diff ordinary state and a vessel takes the ground differently f intended to take

But there is no stranding where the ship takes the gre nary course of navigations [10]

15 Ship —The term "ship" includes the hull, m stores and provisions for the officers and crew, and, in t engaged in a special trade, the ordinary fittings requisite also, in the case of a steamship, the machinery, boilers, and stores, if owned by the assured and also in the case of a ship other than steam, the machinery and fuels and engine stores, assured

This rule corresponds to rule 15 of Schedule 1 of the 1906 For the meaning of the term "ship," *see* Notes under sect section 18, *supra*

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1 *Thames and Mersey Marine Insurance Co* v *Hamilton Fraser & Co* (1887) 12 App Cas 484 *see* also *Canada Rice Mills Ltd* v *Union Marine and General Insurance Co Ltd* (1941) A C 55 P C (1940) 4 All E R 169 *s e* also Notes under S 2 (*h*)

2 Higgins v *Smith* (17—) 3 Burr 1550, *Price & Co* v *Al Ships Small Damage Insurance Association* (1889) 22 Q B D 560 C A ; *see* also Notes under S 2 (*h*)

3 (1797) 7 Term Rep 210

4 (1790) 7 Term Rep 216

5 (1893) 1 Q B 476

6 (1835) 1 Bing N C 526 on appeal (1836) 3 Bing N C 266

7 (1893) P 209

8 *Rayner* v *Godmond* (1821) 5 225 *Barrow* v *Bell* (1825) 736 *Bishop* v *Pentland* (1827) 219 *Carruthers* v *Sydebotham* M and S 77, *The Lapwing* 112

9 *De Mattos* v *Saunders* (1872) L R 570, *Letchford* v *Oldham*, (1880) 5 Q 538 C A

10 *Wills* v *Hopewood* (1832) 3 B and Ad *Corcoran* v *Gurney* (1853) 1 E and B 4 *Kingsford* v *Marshall* (1832) 8 Bing 450

PART IV

(A) THE LIFE INSURANCE CORPORATION ACT, 1956

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PART IV

(A) THE LIFE INSURANCE CORPORATION ACT, 1956

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THE LIFE INSURANCE CORPORATION ACT 1956

(XXXI of 1956)

[18*th June*, 1956]

AN ACT to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows

CHAPTER I

Preliminary

1 (1) This Act may be called THE LIFE INSURANCE CORPORATION ACT, 1956

Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint

The Act was brought into force on 1st July, 1956 (*Vide* Notification No S R O 1456, dated the 26th June, 1956, see *Gazette of India*, Extraordinary, 1956, Part II, Section 3, page 1531)

2 In this Act, unless the context otherwise requires,—

Definitions

(1) "appointed day" means the date on which the Corporation is established under section 3 ,

(2) "Composite insurer" means an insurer carrying on in addition to the controlled business any other kind of insurance business ,

(3) "Controlled business" means—

(*i*) in the case of any insurer specified in sub-clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 of the Insurance Act and carrying on life insurance business—

(*a*) all his business, if he carries on no other class of insurance business ,

(*b*) all the business appertaining to his life insurance business, if he carries on any other class of insurance business also,

(*c*) all his business, if his certificate of registration under the Insurance Act in respect of general insurance business stands wholly cancelled for a period of more than six months on the 19th day of January 1956 ,

(*ii*) in the case of any other insurer specified in clause (9) of section 2 of the Insurance Act and carrying on life insurance business—

(*a*) all his business in India, if he carries on no other class of insurance business in India,

(*b*) all the business appertaining to his life insurance business in India, if he carries on any other class of insurance business also in India,

(*c*) all his business in India, if his certificate of registration under the Insurance Act in respect of general insurance business in India stands wholly cancelled for a period of more than six months on the 19th day of January, 1956

Explanation—An insurer is said to carry on no class of insurance business other than life insurance business, if, in addition to life insurance business, he carries on only capital redemption business or annuity certain business or both, and the expression "business appertaining to his life insurance business" in sub-clauses (*i*) and (*ii*) shall be construed accordingly,

(*iii*) in the case of a provident society, as defined in section 65 of the Insurance Act, all its business,

(*iv*) in the case of the Central Government or a State Government, all life insurance business carried on by it, subject to the exceptions specified in section 44,

(4) "Corporation" means the Life Insurance Corporation of India established under section 3,

(5) "Insurance Act" means the Insurance Act, 1938,

(6) "insurer" means an insurer as defined in the Insurance Act who carries on life insurance business in India and includes the Government and a provident society as defined in section 65 of the Insurance Act,

(7) "member" means a member of the Corporation,

(8) "prescribed" means prescribed by rules made under this Act,

(9) "Tribunal" means a tribunal constituted under section 17 and having jurisdiction in respect of any matter under the rules made under this Act,

(10) all other words and expressions used herein but not defined and defined in the Insurance Act shall have the meaning ... by assigned to them in that Act

SYNOPSIS

1 *"Unless the context otherwise requires"*
2 *"Appointed day"*
3 *"Composite insurer"*
4 *"Controlled business"*
5 *"Capital redemption"*
6 *Corporation*
7 *Insurer*
8 *"Member"*
9 *"Prescribed"*
10 *"Tribunal"*

1 "Unless the context otherwise requires"—This expression is a qualifying one and must be borne in mind while construing the definitions given in the section If any definition of any term as contained in this section is inappropriate with the meaning of the term given in the section, it should not be adopted [1]

2 "Appointed day" has been defined to mean the date on which the Corporation is established under section 3 of the Act, *i e* 1st September, 1956 [2]

3 "Composite insurer"—This expression has been defined to mean an insurer who has been carrying on 'controlled business' as defined in sub-section (3) of this section along with any other insurance business, *i e*, general or miscellaneous insurance business as defined in sub-sections (6B) and (13B) of section 2 of the Insurance Act (IV of 1938)

4 "Controlled business"—The definition of 'controlled business' as given in sub-section (2) of section 2 of the Life Insurance (Emergency Provisions) Act IX of 1956 has been adopted in this section to which all life insurance business carried on by the Central Government or a State Government except those exempted in section 44 of this Act has been added The expression "controlled business" primarily covers the whole of the life insurance business of an insurer, whether Indian or non-Indian or a Company incorporated under the Companies Act or a provident society as defined in section 65 of the Insurance Act, or a Government, whether Central or State It also covers, (*i*) all the business appertaining to his life insurance business if he carries on any other class of insurance business, and (*ii*) all his business if his certificate of registration with regard to general insurance business stands cancelled for a period of more than six months on 19th January, 1956, under the Insurance Act, 1938 With regard to a foreign insurer, all his business in life insurance or all his business when his certificate of registration for general insurance has been cancelled for more than six months before the said date must be the business in India The expression "business appertaining to his life insurance business" would include not only his life insurance business but also (*i*) capital redemption business, or (*ii*) annuity certain business, or (*iii*) both capital redemption and annuity certain businesses [3]

5 "Capital redemption business"—This kind of insurance provides for the payment of a fixed sum of money at a certain future date Premiums are generally paid either in a single sum or more generally by periodical payments The most distinguishing feature of this kind of insurance is that the payment of neither the sum assured nor the premiums payable is in any way contingent upon human life The object of such an insurance is to

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1 For interpretation of definition clause *see* Note 1 under section 2 of the Insurance Act, at p 10 *infra*

2 *Vide* Notification No S R O 1587 dated 30th August 1956 See *Gazette of India*, Extraordinary 1956, Part II, Section 3, p 1799

3 For definition and meaning of insurance business *see* Note 16 *infra* for annuity insurance at p 41 under section 2 of the Act, 1938

redeem debentures or debt of a similar nature at the end of fixed term Thus, where the insured purchases a leasehold property he takes out a policy of capital redemption insurance whereby by payment of premiums during the period of the lease the amount under the policy becomes available at the end of the term of the lease when the property passes to the landlord and the lessee's outlay is reimbursed Its advantage is that on the death of the assured the policy can be continued by his personal representatives It is also known as 'sinking fund' insurance Children's endowment policy issued by insurers is akin to this type of insurance In such a policy it is stipulated that a fixed sum of money will be paid at a certain future date, namely, on the child s attaining a particular age If the father of the child who takes out the policy dies the guardian of the child can continue to pay the premium and if the child dies, the same can be shifted to any other child

6 **"Corporation"** has been defined to mean the Life Insurance Corporation of India as established by the Central Government by Notification in the official Gazette with effect from 1st September, 1956 and constituted as a body corporate in accordance with section 3 of the Act

7 **"Insurer"** has been defined to mean insurer as defined in the Insurance Act (IV of 1938) and also to include the Government and a provident society as defined in Part III of the said Act [1]

8 **"Member"** has been defined to mean a member of the Life Insurance Corporation of India appointed thereto by the Central Government

9 **"Prescribed"** has been defined to mean prescribed by rules under this Act, i e , the rules made by the Central Government in accordance with section 48 of this Act but the term should not include to mean the power to make regulations by the Corporation under section 49 of the Act

10 **"Tribunal"** has been defined to mean a tribunal constituted by the Central Government for the purposes of the Act in accordance with section 17 of the Act

The definition of words and expressions used in this Act has not been given exhaustively and hence in sub-section (10) of this section, it has been provided that the words and expressions which have not been defined in this Act must be given the same meanings respectively as assigned to them in the Insurance Act, 1938 Thus, the words, such as, "auditor", "actuary", "controller" although used in this Act and not defined in this section should be given the meaning as defined in the Insurance Act, 1938

CHAPTER II

Establishment of Life Insurance Corporation of India

Establishment and incorporation of Life Insurance Corporation of India

3 (1) With effect from such date as the Central Government may, by notification in the official Gazette, appoint, there shall be established a Corporation called the Life Insurance Corporation of India

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1 For definition of insurer in the Insurance Act *see* Note 5 *under section 2* at page 16 *supra* and of provident society, *see* Note 4 under section 65 of the said Act at page 510 *supra*

(2) The Corporation shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and may by its name sue and be sued

Sub-section (1) lays down that there shall be established a Corporation of the name of Life Insurance Corporation of India and for the purpose gives the power to the Central Government to appoint a date from when such Corporation is deemed to be established The Corporation ushered into existence on and from 1st September, 1956, as that is the date which the Central Government has appointed by Notification in official Gazette as envisaged herein [1]

Sub section (2) invests the Corporation so established with corporate powers, i e , it becomes a juristic person distinct from its members composing it having perpetual succession and a common seal and with power to acquire, hold and dispose of the property subject to the provisions in this Act and it can sue in its name or be also sued by others

Constitution of the Corporation

4 (1) The Corporation shall consist of such number of persons not exceeding fifteen as the Central Government may think fit to appoint thereto and one of them shall be appointed by the Central Government to be the chairman thereof

(2) Before appointing a person to be a member, the Central Government shall satisfy itself that that person will have no such financial or other interest as is likely to affect prejudicially the exercise or performance by him of his functions as a member, and the Central Government shall also satisfy itself from time to time with respect to every member that he has no such interest , and any person who is, or whom the Central Government proposes to appoint and who has consented to be, a member shall, whenever required by the Central Government so to do, furnish to it such information as the Central Government considers necessary for the performance of its duties under this sub-section

(3) A member who is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation shall, as soon as possible, after the relevant circumstances have come to his knowledge, disclose the nature of his interest to the Corporation , and the member shall not take part in any deliberation or discussion of the Corporation with respect to that contract

SYNOPSIS

1 *Object and scope*
2 *Powers of the Central Government*
3 *Duties of the Central Government*
4 *Duties of a member*
5 *Term of office of members*
6 *Resignation of members and the Chairman*
7 *Cessation of membership*
8 *Removal of a member*
9 *Filling up of casual vacancies among members*
10 *Fees of members*
11 *Travelling and daily allowance*

1 *See* Notification No S R O 1607, dated 30th August 1956 in the *Gazette of India*, Extraordinary, 1956, Part II, p 1799

1 **Object and scope** —The object of the section is to lay down the procedure for constituting the Corporation In this regard, the Central Government has been empowered to appoint members thereto not exceeding fifteen in number and also to appoint the Chairman thereof In appointing such members, the Central Government has also been invested with certain duties Sub-section (3) also imposes certain duties on the members who must perform them The scope of the section does not go beyond the powers and duties of the Central Government and the duties of the members appointed or to be appointed to the Corporation

2 **Powers of the Central Government** —Sub-section (1) enjoins that the Corporation must consist of not more than fifteen members The decision whether such number should be fifteen or less or who is to be appointed a member rests on the discretion of the Central Government The Chairman of the Corporation has also to be appointed by the Central Government Thus, the constitution of the Corporation will be of members not exceeding fifteen in number of which one must be a Chairman

3 **Duties of the Central Government** —Sub-section (2) enjoins certain duties on the Central Government before it exercises its discretion in appointing a person to be a member These duties are imposed before it appoints a member and also extend to after the appointment is made It must satisfy itself before the appointment is made that the person to be appointed as a member must not possess any financial or other interest as may likely affect prejudicially the exercise or performance by him of his functions as a member, and after such appointment, it must also satisfy occasionally with respect to every member so appointed that he has no such interest

4 **Duties of a member** —The duties imposed on a member of the Corporation, whether he is appointed or proposed to be appointed or he has given his consent to become a member, are that he must furnish to the Central Government such information whenever such Government requires him to so furnish, but such information or informations must relate to his financial or other interest as would prejudicially affect the performance of his duties as such member What information or informations would be necessary for the Central Government to come to a decision about his interest as prejudicially affecting his duties as a member would rest on the discretion of the Central Government

The other duties imposed upon the member as envisaged in sub-section (3) of this section are that (*i*) he must disclose the nature of his interest to the Corporation when he is in any way directly or indirectly interested in a contract made or proposed to be made by the Corporation Such disclosure of his interest must be made so soon as the relevant circumstances regarding the said contract have come to his knowledge, and (*ii*) he must not take part in any deliberation or discussion of the Corporation with respect to that contract

Even if the interest belongs to him beneficially or as a trustee for others, the member must disclose that interest[1] The provisions also serve as a safeguard against possible bias of the member concerned in influencing his decision in the matter[2]

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1 See *T R Pratt Ltd* v *M T, Ltd*, (1938) P C 159,

2 Compare sections 299 and 300 of the Companies Act, 1956,

5 **Term of office of members** —An official member shall hold office during the pleasure of the Central Government but a non-official shall hold office for a period of two years or a shorter period than two years as will be specified in the order of appointment and an outgoing member shall be eligible for re appointment

6 **Resignation of members and the Chairman** —The Chairman or any member has the discretion to resign but his resignation should be in writing under his hand and addressed to the Central Government His resignation will take effect from the date on which it is accepted by the Central Government, or on the expiry of 30 days from the date of resignation, whichever is earlier

7 **Cessation of membership** —A member shall cease to be a member of the Corporation when he absents himself from three consecutive meetings of the Corporation without its leave

8 **Removal of a member** —A member can be removed from his office by the Central Government if it is of the opinion that he has so flagrantly abused in any manner his position as a member as to render his continuance as a member detrimental to the public interests but before such removal he must be given a reasonable opportunity showing cause against his removal

9 **Filling up of casual vacancies among members** —In case of any vacancy occurring in the office of a member by reason of his death, resignation or removal or otherwise, the Central Government may appoint any other person to act in his place

10 **Fees of members** —A member who is not a whole-time officer of the Corporation or an officer of the Central Government, shall be paid fees by the Corporation as follows

(*a*) for attending meetings of the Corporation— Rs 100 for each meeting,

(*b*) for attending meetings of the Executive or Investment Committee of the Corporation— Rs 25 for each meeting,

(*c*) for attending meetings of any other Committee— Rs 20 for each meeting

11 **Travelling and daily allowance** —Every non official member shall be entitled to—

(*a*) travelling allowances for journeys performed by him in connection with the work of the Corporation at the rates admissible to officers of the first grade in the service of the Central Government and while travelling by rail, he shall be entitled to travel by air-conditioned accommodation, if such accommodation is available,

(*b*) daily allowances for halts on duty at the maximum rate admissible to an officer of the first grade in the service of the Central Government

The travelling and daily allowances of an official member shall be governed by the rules applicable to him for journeys performed on official

duty, and in case such official member is not in the service of the Corporation, the latter shall make necessary reimbursement to the authority employing such official [1]

Capital of the Corporation

5 (1) The original capital of the Corporation shall be five crores of rupees provided by the Central Government after due appropriation made by Parliament by law for the purpose, and the terms and conditions relating to the provision of such capital shall be such as may be determined by the Central Government

(2) The Central Government may, on the recommendation of the Corporation, reduce the capital of the Corporation to such extent and in such manner as the Central Government may determine

The original capital of the Corporation shall be five crores of rupees which will be provided by the Central Government The terms and conditions of such capital shall be determined by the said Government It will have power to reduce the capital on the recommendation of the Corporation but the extent and the manner in which such capital is to be reduced may also be determined by the Central Government

CHAPTER III

Functions of the Corporation

Functions of the Corporation

6 (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the general duty of the Corporation to carry on life insurance business, whether in or outside India, and the Corporation shall so exercise its powers under this Act as to secure that life insurance business is developed to the best advantage of the community

(2) Without prejudice to the generality of the provisions contained in sub section (1) but subject to the other provisions contained in this Act, the Corporation shall have power—

(*a*) to carry on capital redemption business, annuity certain business or re-insurance business in so far as such re-insurance business appertains to life insurance business,

(*b*) subject to the rules, if any, made by the Central Government in this behalf, to invest the funds of the Corporation in such manner as the Corporation may think fit and to take all such steps as may be necessary or expedient for the protection or realisation of any investment, including the taking over of and administering any property offered as security for the investment until a suitable opportunity arises for its disposal,

1 *See* Rules 3 to 9 Life Insurance Corporation Rules 1956

(c) to acquire, hold and dispose of any property for the purpose of its business,

(d) to transfer the whole or any part of the life insurance business carried on outside India to any other person or persons, if in the interests of the Corporation it is expedient so to do ,

(e) to advance or lend money upon the security of any movable or immovable property or otherwise ,

(f) to borrow or raise any money in such manner and upon such security as the Corporation may think fit ,

(g) to carry on either by itself or through any subsidiary any other business in any case where such other business was being carried on by a subsidiary of an insurer whose controlled business has been transferred to and vested in the Corporation under this Act ,

(h) to carry on any other business which may seem to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the Corporation

(i) to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the Corporation

(3) In the discharge of any of its functions the Corporation shall act so far as may be on business principles

SYNOPSIS

1 *Object and scope*
2 *Methods of incorporating a Corporation*
3 *Public Corporations and public companies*
4 *General duty of Corporation*
5 *Other business Corporation permitted to carry on*
6 *Powers of Corporation*

1 Object and scope—The object of the section is twofold—(1) it affirmatively determines what shall be the powers of the Corporation the stated functions confer on the Corporation all powers reasonably requisite to the attainment thereof, (2) it limits and restricts the powers of the Corporation to those conferred, save so far as other powers are given by this Act

The statutory functions of the Corporation as envisaged under this section are more or less akin to the objects clause found in the Memorandum of Association of a company registered under the Companies Act After stating generally the functions of the Corporation, namely, to carry on mainly life insurance business in or outside India, it also confers certain other functions as stated in clauses (*a*) to (*g*) of sub-section (2) and after defining those functions, it also confers on the Corporation the following powers, namely,—

(*i*) power to do whatever it is necessary to do with a view to the attainment of the functions stated in this section,

(*ii*) power to do whatever else may fairly be regarded as incidental to and consequential on the stated functions, and

(*iii*) power to do such other things as it is allowed to do by this Act

This section "states affirmatively the ambit and extent of vitality and power which by law are given to the Corporation" and although it does not negatively state that "nothing shall be done beyond that ambit," yet "no attempt shall be made to use the corporate life for any other purpose than that which is so specified"[1]

In *Eastern Counties Rly v Hawkes*,[2] Lord Cranworth, L C, observed thus "It must, therefore, be now considered as a well-settled doctrine, that a company incorporated by Act of Parliament for a special purpose cannot devote any part of its funds to objects unauthorised by the terms of its incorporation, however desirable such application may appear to be"[3]

2 Methods of incorporating a Corporation—In England, Parliament may incorporate a Corporation in one of the following ways, namely, (1) by a private or local Act, (2) by a special or public Act, or (3) under a general public Act, by registration in compliance with statutory requirements

Incorporation of public utilities, such as canals, railways or transport, gas, water, electricity enterprises is done by the first method, the incorporation of enterprises of national importance is done by the second method and such a Corporation is known as a Public Corporation, and the third method is used to form business Corporation in the private sector of business this is done by the Registrar of Companies by virtue of the power conferred on him through issuing a certificate of registration under the Companies Act, such Corporations are known as the registered Companies[3] The Life Insurance Corporation of India has been incorporated by the second method aforesaid as this Act incorporates enterprise of life insurance business being nationalised and has been charged with the management of that nationalised industry and to have monopolistic trading rights thereon

3 Public Corporations and Public Companies—Public Corporations must not be confused with Public Companies although both have some features common to them The characteristics of a Public Corporation have been described by Denning, L J, thus

'A Public Corporation is a statutory Corporation of a kind comparatively new to English law It has many of the qualities which belong to

1 See *Ashbury Railway Carriage and Iron Co v Riche* (1875) L R 7 H L 653 at p 670 *per* Lord Cairns L C *see also Attorney-General v Great Eastern Rly* (1880) 5 App Cas 473 *London County Council v Attorney-General* (1902) A C 165 *per* Lord Halsbury L C

2 (1855) 5 H L C 331 at p 48

3 Palmer's Company Law 20th Ed pp 779 780

Corporations of other kinds to which we are accustomed It has, for instance, defined powers which it cannot exceed, and it is directed by a group of men whose duty it is to see that those powers are properly used It may own property, carry on business, borrow and lend money, just as any other Corporation may do, so long as it keeps within the bounds which Parliament has set But the significant difference in this Corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs The money which the Corporation needs is not raised by the issue of shares, but by borrowing, and its borrowing is not secured by debentures but is guaranteed by the treasury If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom, that is to say, on the tax-payer There are no shareholders to elect the directors or to fix their remuneration There are no profits to be made or distributed The duty of the Corporation is to make revenue and expenditure balance one another, taking, of course, one year with another, but not to make profits If it should make losses and be unable to pay its debts, its property is liable to execution, but it is not liable to be wound up at the suit of any creditor The tax-payer would, no doubt, be expected to come to its rescue before the creditors stepped in Indeed, the tax payer is the universal guarantor of the Corporation"[1]

"The Public Corporation can be compared to a large public company, but it has no shareholders, and its profits are not distributable to private persons, they are 'ploughed back' into the enterprise The Public Corporation is responsible to the Government and so far as its policy decisions are concerned, through a 'parent' Minister to Parliament"[2]

4 **General duty of Corporation** —The general duty of the Corporation as enjoined in sub section (1) of this section is to carry on life insurance business subject to the rules, if any, made by the Central Government in this behalf and to secure to develop that business to the best advantage of the community In discharging such duties, the Corporation has to conduct itself, as far as practicable, on business principles

5 **Other businesses Corporation permitted to carry on** —Clause (*a*) of sub-section (2) permits the Corporation to carry on other businesses other than life insurance business, particularly, such as, (1) capital redemption business, (2) annuity certain business, or (3) re insurance business appertaining to life insurance business

But clauses (*g*) and (*h*) of sub-section (2) permits the Corporation to carry on—

(i) either by itself or through any subsidiary any other business in any case where such other business was being carried on by a subsidiary of an insurer whose controlled business has been transferred to and vested in the Corporation under this Act, and

(ii) any other business which may seem to the Corporation to be capable of being conveniently carried on in connection with its business and calculated directly or indirectly to render profitable the business of the Corporation

6 **Powers of Corporation** — Clauses (*b*) to (*f*) of sub section (2) invests the Corporation with certain particular powers mentioned therein and clause (i) of the said sub-section invests it with general powers incidental to

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1 *Tamlin* v *Hannaford* (1950) 1 K B 18 at p 22

2 Palmer's Company Law 20th Ed, p 782

those particular powers is invested are—

The particular powers with which the Corporation

(i) to invest the funds of the Corporation subject to the rules made by the Central Government and as the Corporation would deem fit ,

(ii) to take all necessary steps for the protection or realisation of any investment including power to take over and administer the property offered as security until it is disposed of ,

(iii) to acquire, hold and dispose of any property ,

(iv) to transfer the whole or any part of its life insurance business carried on outside India to any other person or persons ,

(v) to advance or lend money upon the security of any movable or immovable property or otherwise , and

(vi) to borrow or raise any moneys in such manner and upon such security as the Corporation may think fit

The general power of the Corporation is to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the Corporation These incidental powers are not to be treated as separate powers, complete in themselves, but should be treated as incidental to the powers of the Corporation specified in this section and must be used only for the purpose of carrying out these powers These powers may, amongst others, include the powers—

(i) to bring actions and take proceedings ,

(ii) to compromise suits and disputes ,

(iii) to have a banking account ,

(iv) to employ agents ,

(v) to pay bonuses and pensions to employees ,

(vi) to open agencies ,

(vii) to make contracts for purchase of supply ,

(viii) to purchase or take on lease stores ,

and such like powers What powers should be treated as incidental or consequential on the powers specified must depend upon the facts and circumstances of each case and in this regard no generalisation of such powers can be made

CHAPTER IV

Transfer of existing Life Insurance business to the Corporation

Transfer of assets and liabilities of existing insurers carrying on controlled business

7 (1) On the appointed day there shall be transferred to and vested in the Corporation all the assets and liabilities appertaining to controlled business of all insurers

those particular powers The particular powers with which the Corpo
is invested are—

(i) to invest the funds of the Corporation subject to the rules m by the Central Government and as the Corporation wi deem fit ,

(ii) to take all necessary steps for the protection or realisat of any investment including power to take over and adminis the property offered as security until it is disposed of ,

(iii) to acquire, hold and dispose of any property ,

(iv) to transfer the whole or any part of its life insurance business carried on outside India to any other person or persons ,

(v) to advance or lend money upon the security of any movable or immovable property or otherwise , and

(vi) to borrow or raise any moneys in such manner and upon such security as the Corporation may think fit

The general power of the Corporation is to do all such things as may be incidental or conducive to the proper exercise of any of the powers of the Corporation These incidental powers are not to be treated as separate powers, complete in themselves, but should be treated as incidental to the powers of the Corporation specified in this section and must be used only for the purpose of carrying out these powers These powers may, amongst others, include the powers—

(i) to bring actions and take proceedings ,

(ii) to compromise suits and disputes ,

(iii) to have a banking account ,

(iv) to employ agents ,

(v) to pay bonuses and pensions to employees ,

(vi) to open agencies ,

(vii) to make contracts for purchase of supply ,

(viii) to purchase or take on lease stores ,

and such like powers What powers should be treated as incidental quential on the powers specified must depend upon the facts ar stances of each case and in this regard no generalisation of such be made

CHAPTER IV

Transfer of existing Life Insurance business to the Corpora

Transfer of assets and liabilities of existing insurers carrying on controlled business

7 (1) On the appointed day there shall be transferred and vested in the Corporation all the assets an liabilities appertaining to controlled business of al insurers

4 Assets of foreign insurers held in trust to vest free from such trust—Under sub-section (6) of section 27 of the Insurance Act, 1938, foreign insurers have to keep their assets in India except foreign assets held outside India in trust which vests in trustees India By virtue of sub section (3) of this section, such assets of foreign insurers held in trust shall vest in the Corporation free from such trust Moreover, any other assets held in trust for the benefit of policy-holders should also vest in the Corporation free from the said trust

Provident superannuation and other like funds

8 (1) Where an insurer whose controlled business is to be transferred to and vested in the Corporation under section 7, has established a provident or superannuation fund or any other life fund for the benefit of his employees and constituted a trust in respect thereof (hereinafter in this section referred to as an existing trust), the moneys standing to the credit of any such fund on the appointed day, together with any other assets belonging to such fund, shall, subject to the provisions of sub-section (2), stand transferred to and vest in the Corporation on the appointed day free from any such trust

(2) Where all the employees of any such insurer do not become employees of the Corporation under section 11, the moneys and other assets belonging to any such fund as is referred to in sub-section (1), shall be apportioned between the trustees of the fund and the Corporation in the prescribed manner, and in case of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final

(3) The Corporation shall, as soon as may be after the appointed day, constitute in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the objects of the existing trusts as in the circumstances may be practicable

(4) Where all the moneys and other assets belonging to an existing trust are transferred to and vested in the Corporation under this section, the trustees of such trust, shall, as from the appointed day, be discharged from the trust, except as respects things done or omitted to be done before the appointed day

SYNOPSIS

1 *Object and scope*
2 *Partial vesting of certain trust funds*
3 *Corporation to constitute trust*
4 *Discharge of transferors*

1 Object and scope—This section was not originally in the Bill but was introduced by the Select Committee Its object and scope can be gathered from the report of the Select Committee It observed thus "The Committee feel that where an insurer has established a provident fund, superannuation fund or any other fund for the benefit of its employees and constituted a trust, the moneys standing to the credit of any such fund in

Sub-section (3) releases any such assets subject to any trust under section 27 (6) of the Insurance Act, 1938, or to any other trust for the benefit of policy-holders free from such trust In inserting sub-section (3), the Select Committee observed "The Committee feel that since Government will not stand guarantee, there is no longer any necessity for any such trust as is referred to in section 27 (6) of the Insurance Act"

Under the Act, the insurer as such did not vest in the Central Government It was only the management which vested in the Central Government Where a suit was instituted on 20th April, 1956, against an insurance company whose management of business was taken over by the Custodian appointed under the Life Insurance (Emergency Provisions) Act, 1956, Union of India was not a necessary party and as such notice under section 80 of the Code of Civil Procedure for the purpose of suing the Union was not required [1]

2 What the assets of the controlled business of insurer to include ?—The assets appertaining to the controlled business of an insurer must include—

(i) all rights and powers appertaining to his controlled business ;

(ii) all property, whether movable or immovable, appertaining to the said business including—

(a) Cash balances, (b) reserve funds, (c) investments, (d) deposits, and (e) all other rights and interests in and arising out of such property as may be in the possession of the insurer ;

(iii) all books of account or documents relating to the controlled business of the insurer, and in relation to a composite insurer ;

(iv) that part of the paid-up capital of the insurer or assets representing such part which has or have been allocated to the controlled business of the insurer in accordance with the rules made in this behalf, *i e*, as per rule 18 of the Life Insurance Corporation Rules, 1956, and in relation to a Government ;

(v) the amount lying to the credit of that business on the appointed day, *i e*, 1st September, 1956

3 What the liabilities of the controlled business to include ?—The liabilities appertaining to the controlled business of an insurer must include—

(i) all debts of whatever kind then existing ;

(ii) all liabilities of whatever kind then existing ; and

(iii) all obligations of whatever kind then existing ;

all such debts, liabilities and obligations must be appertaining to the controlled business of the insurer

1 *Mam Laxmi v Hindusthan Co-operative Society Ltd*, 66 C. W N 774

4 Assets of foreign insurers held in trust to vest free from such trust —Under sub section (6) of section 27 of the Insurance Act, 1938, foreign insurers have to keep their assets in India except foreign assets held outside India in trust which vests in trustees India By virtue of sub-section (3) of this section, such assets of foreign insurers held in trust shall vest in the Corporation free from such trust Moreover, any other assets held in trust for the benefit of policy-holders should also vest in the Corporation free from the said trust

Provident superannuation and other like funds

8 (1) Where an insurer whose controlled business is to be transferred to and vested in the Corporation under section 7, has established a provident or superannuation fund or any other life fund for the benefit of his employees and constituted a trust in respect thereof (hereinafter in this section referred to as an existing trust), the moneys standing to the credit of any such fund on the appointed day, together with any other assets belonging to such fund, shall, subject to the provisions of sub-section (2), stand transferred to and vest in the Corporation on the appointed day free from any such trust

(2) Where all the employees of any such insurer do not become employees of the Corporation under section 11, the moneys and other assets belonging to any such fund as is referred to in sub-section (1), shall be apportioned between the trustees of the fund and the Corporation in the prescribed manner , and in case of any dispute regarding such apportionment, the decision of the Central Government thereon shall be final

(3) The Corporation shall, as soon as may be after the appointed day, constitute in respect of the moneys and other assets which are transferred to and vested in it under this section, one or more trusts having objects as similar to the objects of the existing trusts as in the circumstances may be practicable.

(4) Where all the moneys and other assets belonging to an existing trust are transferred to and vested in the Corporation under this section, the trustees of such trust, shall, as from the appointed day, be discharged from the trust, except as respects things done or omitted to be done before the appointed day.

SYNOPSIS

1 *Object and scope*
2 *Partial vesting of certain trust funds*
3 *Corporation to constitute trust*
4 *Discharge of transfers*

1 Object and scope —This section was not originally in the Bill but was introduced by the Select Committee Its object and scope can be gathered from the report of the Select Committee It observed thus "The Committee feel that where an insurer has established a provident fund, superannuation fund or any other fund for the benefit of its employees and constituted a trust, the moneys standing to the credit of any such fund in

respect of the employees who have become the employees of the Corporation should vest in the Corporation and the Corporation may constitute one or more trusts with similar objects in respect of such transferred funds "

2 **Partial vesting of certain trust funds** —Any existing trust funds of the nature of provident, superannuation or life fund for the benefit of the employees of the insurer whose controlled business has vested in the Corporation also stands transferred and vested in the Corporation on 1st September, 1956, free from trust except the trust fund of those employees who do not become employees of the Corporation under section 11 of the Act Where such a trust fund was founded for the benefit of employees, some of whom have become the employees of the Corporation by virtue of section 11 and some have not so become its employees, the moneys and assets belonging to such a fund must be apportioned between the trustees of the fund and the Corporation in the prescribed manner and any dispute arising in such apportionment has to be decided by the Central Government and its decision thereon has been made final

3 **Corporation to constitute trust** —A duty has been imposed on the Corporation by sub-section (3) to constitute one or more trusts, whose objects should be similar to the original trust, of the moneys and assets of the said fund transferred to and vested in the Corporation in the manner aforesaid Such trust has to be constituted within a reasonable time from the date of its vesting

4 **Discharge of trustees** —On and from the date of vesting of the said trust fund or a portion thereof, as the case may be, in the Corporation, the trustees of the said fund are discharged from the trust or a portion of it, as the case may be, except what they have done or have omitted to do before the said date of vesting

General effect of vesting of controlled fund

9 (1) Unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which an insurer whose controlled business has been transferred to and vested in the Corporation is a party or which are in favour of such insurer, shall in so far as they relate to the controlled business of the insurer be of as full force and effect against or in favour of the Corporation, as the case may be, and may be enforced or acted upon as fully and effectually as if, instead of the insurer, the corporation had been a party thereto or as if they had been entered into or issued in favour of the Corporation

(2) If on the appointed day any suit, appeal or other legal proceeding of whatever nature is pending by or against an insurer, then, in so far as it relates to his controlled business, it shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Corporation of the business of the insurer or of anything done under this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Corporation

SYNOPSIS

1 *Object and scope*
2 *Contracts, agreements, etc., subsisting to remain in full force*
3 *Pending suit, appeal or other legal proceedings not to abate*

1 **Object and scope**—The object of the section is to put the Corporation into the shoes of the insurer whose controlled business or any part thereof has vested in the Corporation in respect of that insurer's controlled business regarding his rights and obligations with respect to any contract, agreement, or other instrument of whatever nature or with regard to any suit, appeal or legal proceeding *vis a-vis* that insurer in respect of the said controlled business and any policy-holder or any other person The effect of vesting is that the Corporation is substituted in the place of the insurer whose controlled business has so vested in the Corporation, as if the contracts, agreements or other instrument subsisting at the date of the vesting are between the Corporation and that other party unless otherwise expressly provided by or under this Act

2. **Contracts, agreements, etc , subsisting to remain in full force**—Sub-section (1) provides that all contracts, agreements and other instruments of any kind subsisting at the date of vesting shall remain in full force and effect against or in favour of the Corporation, as the case may be They may be enforced or acted upon as fully and effectually by or against the Corporation as if the Corporation had been a party to the said contracts, agreements or instruments or as if they had been entered into or issued in favour of the Corporation But this sub-section has to be read subject to any provisions expressly providing otherwise by or under this Act Such express provisions may be found in sections 11, 14 and 15, *post*

3 **Pending suit, appeal or other legal proceedings not to abate**—Sub section (2) provides that no suit, appeal or legal proceeding pending at the date of vesting shall abate or be discontinued by reason of such transfer and vesting, neither will it be in any way prejudicially affected thereby but the said suit, appeal or other proceedings may be continued, prosecuted and enforced by or against the Corporation In the place of the insurer whose controlled business has stood transferred to, and vested in, the Corporation, the latter should be substituted either as plaintiff or defendant or as petitioner or opposite party, as the case may be

Provisions as to composite insurers

10 (1) For the removal of doubt, it is hereby declared that in any case where an insurer whose controlled business has been transferred to and vested in the Corporation under this Act is a composite insurer, the provisions of the preceding sections shall only apply to the extent to which any property appertains to his controlled business and to rights and powers acquired, and to debts, liabilities and obligations incurred, and to contracts, agreements and other instruments made by the insurer for the purposes of his controlled business and to legal proceedings relating to those purposes, and the provisions of those sections shall be construed accordingly

(2) The Central Government may, by rules made in this behalf, provide—

(*a*) for the determination of the question whether any property appertains to his controlled business or whether any rights, powers, debts, liabilities or obligations were acquired or incurred, or any contract, agreement or other

instrument was made by the insurer for the purposes of his controlled business or whether any documents relate to those purposes,

(*b*) for the allocation of the paid-up capital or assets representing such paid up capital, as the case may be, between the controlled business of the insurer and any other business,

(*c*) for substituting for any agreements entered into by any insurer partly for the purposes of his controlled business and partly for other purposes separate agreements in the requisite terms and for any apportionments and indemnities consequent thereon,

(*d*) for the severance of leases comprising property of which part only is transferred to and vested in the Corporation by virtue of this Act and for apportionments consequent on such severance,

(*e*) for the apportionment and the making of financial adjustment with respect to any debts, liabilities or obligations incurred by any such insurer partly for the purposes of his controlled business and partly for other purposes and for any necessary variation of mortgages, and encumbrances relating to such debts, liabilities or obligations,

(*f*) for the apportionment of the moneys and other assets belonging to any provident or superannuation fund or any other like fund to which the provisions of section 8 do not apply between persons employed in connection with the controlled business of an insurer and other persons,

(*g*) for any other matters supplementary to or consequential on the matters aforesaid for which provision appears to be necessary or expedient

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following

(4) Where at any time before the expiration of six months from the appointed day a question has arisen under this section

or under any rules made thereunder as to whether any property is or was held or used by the insurer for the purposes of his controlled business, the question shall be referred to the Tribunal for decision.

SYNOPSIS

1 *Applicability, object and scope*
2 *Power of Central Government to make rules in respect of composite insurer*
3 *Valuation and apportionment of provident fund, etc*
4 *Allocation of paid-up capital*
5 *Profits from controlled business, meaning of*
6 *"Profits from other business", meaning of*
7 *"Relevant actuarial investigations," meaning of*

1 Applicability, object and scope —The provisions of this section apply only to a composite insurer whose controlled business has been transferred to and vested in the Corporation in accordance with the provisions of the preceding sections 7, 8 and 9

Its object is to lay down expressly that those sections have to be applied to a composite insurer aforesaid to the extent of his assets and liabilities as appertain to the controlled business only and not to the assets and liabilities of his other insurance business Similarly, with regard to suit, appeal or any legal proceeding if it concerns the controlled business of the composite insurer, it will not abate and the Corporation will be substituted in the place of the said insurer, but if it concerns his other insurance business, the Corporation will have no connection therewith and the same will continue in the name of the insurer even after the date of vesting of his controlled business in the Corporation

But occasions may arise where it will be found that the composite insurer's assets and liabilities, his contracts and agreements or instruments and documents are interlinked with the controlled business and other business and in such a case it will be necessary to determine which of the assets and liabilities, and what part of the contracts and agreements or instruments and documents relate to his controlled business and which or what part does not so relate but relate to his other business In determining the same it would further be necessary to apportion and adjust the assets and liabilities, to sever and substitute the contract and agreement, to apportion the moneys and assets of any provident or superannuation fund or any other like fund and to allocate his paid up capital between his controlled business and other business Sub-section (2) empowers the Central Government to make rules for the aforesaid purposes These rules, as provided in sub-section (3), have to be laid before both Houses of Parliament for modifications if to be made therein at all Sub section (4) confers on the Tribunal constituted under this Act, the absolute jurisdiction to decide the questions aforesaid, if they arise at any time before the expiration of six months from the date of vesting, such questions having to be referred to such Tribunal for decision

2 Power of Central Government to make rules in respect of composite insurer —Apart from the powers conferred on the Central Government by section 48 of the Act to make rules to carry out the purposes of the Act, sub section (2) of this section confers such powers on the Central Government for specific purposes mentioned in clauses (*a*) to (*g*) of the said sub section Sub-section (2) of this section has to be read with sub-section (2) of section 7 and sub-section (2) of section 8 The specific purposes for which the Central Government may make rules under this sub-section are—

(i) for the determination of any of the following questions, namely,—

(a) whether any property of the composite insurer appertains to his controlled business ,

(b) whether any rights, powers, debts, liabilities or obligations were acquired or incurred for the purposes of his controlled business ,

(c) whether any contract, agreement or other instrument was made by the insurer for the purposes of his controlled business , or

(d) whether any documents relate to the purposes of his controlled business ,

(ii) for the allocation of,—

(a) the paid-up capital between the insurer's controlled business and any other business , or

(b) the assets representing the paid up capital between his controlled business and any other business ,

(iii) for the substitution of any agreements entered into by any insurer for the purposes of his controlled business and partly for other purposes ,

(iv) for the apportionment of,—

(a) any debts, liabilities or obligations incurred by any such insurer partly for the purposes of his controlled business and partly for other purposes , or

(b) the moneys and other assets belonging to any provident or superannuation fund or any other like fund between persons employed in connection with the controlled business and other persons to which section 8 does not apply ,

(v) for the severance of, leases comprising property for which part only is transferred to and vested in the Corporation ,

(vi) for any other matters supplementary to or consequential on the matters aforesaid where necessary or expedient so to do Thus in case of substitution of agreements, rules for making separate agreements in the requisite terms and for any apportionments and indemnities consequent thereon may be made So also in case of severance of leases, rules for apportionments consequent on such severance may be made Likewise, in case of apportionment of any debts, liabilities or obligations rules for any necessary variation of mortgages and encumbrances relating to them may also be made

3. Valuation and apportionment of provident fund, etc—The assets of a provident or superannuation fund or any other like fund has to be valued at the market rate on the day of vesting of those assets on the Corporation, *i e* , 1st September, 1956

The apportionment of the said funds between the trustees of the funds and the Corporation has to be made in the following manner, namely,—

(i) the moneys and other assets of any provident fund have to be apportioned in the proportion which the total of the amounts lying to the credit of the persons becoming employees of the Corporation bears to the total of the amounts lying to the credit of the persons who do not become employees of the Corporation ,

(ii) the moneys and other assets of any superannuation fund have to be apportioned in the proportion which the liability of the fund in respect of the persons becoming the employees of the Corporation bears to a similar liability in respect of the persons who do not become employees of the Corporation, such liability to be ascertained on such basis as may be determined by the Corporation and approved by the Central Government , and

(iii) the moneys and other assets of any other like fund shall be apportioned in the same principles as set out in item (i) or item (ii), as the case may be

The aforesaid manner of apportionment of provident or superannuation fund or any other like fund shall apply to cases provided in sub-section (1) of section 8 but the same manner of apportionment has also to be applied in cases provided in clause (*f*) of sub-section (2) of this section [1]

4 **Allocation of paid-up capital** —The allocation of paid up capital or assets representing such paid up capital has to be determined as follows

(i) in case of an insurer entitled to receive compensation under Part A of the First Schedule to the Act, the paid-up capital allocable to the controlled business shall be that proportion of the total paid up capital of the insurer which the annual average of the profits from the controlled business during the period covered by the relevant actuarial investigation bears to the total of *such annual average of profits plus* two times the annual average of the profits from other business during that period subject to the maximum amount not exceeding, in any case, a sum of rupees six lakhs ,

(ii) in case of an insurer entitled to compensation under Part B of the First Schedule to the Act, such allocable paid up capital shall be the excess, if any, of the amount of liabilities of the insurer appertaining to his controlled business in existence on 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 4 of Part B of the First Schedule to the Act over the value of the assets of the insurer appertaining to his controlled business (excluding the paid up capital allocable to controlled business) in existence on 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 3 of Part B of the First Schedule to the Act

5 **"Profits from controlled business," meaning of** —The expression means the share of the surplus allocated to the shareholders as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act, 1938, in respect of the *relevant* actuarial investigations Where an insurer has allocated to shareholders more

1 R. 10, L. I C. Rules, 1956.

5 per cent of any such surplus, he shall be deemed to have allocated only 5 per cent of the surplus but when he has not so allocated or has allocated less than 3½ per cent of any such surplus, he shall be deemed to have allocated 3½ per cent of the surplus to the shareholders

6 **"Profits from other business," meaning of**—The expression means the total of the profit less losses transferred to "Profit and Loss Account" from the fire, marine and miscellaneous insurance revenue accounts prepared in accordance with Form 'F' of the Third Schedule to the Insurance Act, 1938

7 **"Relevant actuarial investigations," meaning of**—The expression means such minimum number of latest actuarial investigations as at dates earlier than the 1st day of January, 1956 (not being less than two in any case) would leave the period intervening between the date as at which the actuarial investigation immediately preceding the first of such investigations was made and the date as at which the last of such investigations was made to be not less than four years [1]

Transfer of service of existing employees of insurers to the Corporation

11 (1) Every whole-time employee of an insurer whose controlled business has been transferred to and vested in the Corporation and who was employed by the insurer wholly or mainly in connection with his controlled business immediately before the appointed day shall, on and from the appointed day, become an employee of the Corporation, and shall hold his office therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same on the appointed day, if this Act had not been passed, and shall continue to do so unless and until his employment in the Corporation is terminated or until his remuneration, terms and conditions are duly altered by the Corporation

Provided that nothing contained in this sub-section shall apply to any such employee who has, by notice in writing given to the Central Government prior to the appointed day, intimated his intention of not becoming an employee of the Corporation

(2) Where the Central Government is satisfied that for the purpose of securing uniformity in the scales of remuneration and the other terms and conditions of service applicable to employees of insurer whose controlled business has been transferred to, and vested in the Corporation, it is necessary so to do, or that, in the interest of the Corporation and its policy holders, a reduction in the remuneration payable, or a revision of the other terms and conditions of service applicable, to employees or any class of them is called for, the Central Government may, notwithstanding anything contained in sub-section (1), or in the Industrial Disputes Act, 1947, or in any other law, for the time being in force, alter (whether by way of reduction or otherwise) the remuneration and the other terms

1 Rule 18 L. I. C. Rules 1956.

and conditions of service to such extent and in such manner as it thinks fit, and if the alteration is not acceptable to any employee, the Corporation may terminate his employment by giving him compensation equivalent to three months' remuneration unless the contract of service with such employee provides for a shorter notice of termination.

Explanation —The compensation payable to an employee under this sub section shall be in addition to, and shall not affect, any pension, gratuity, provident fund money or any other benefit to which the employee may be entitled under his contract of service.

(3) If any question arises as to whether any person was a whole-time employee of an insurer or as to whether any employee was employed wholly or mainly in connection with the controlled business of an insurer immediately before the appointed day, the question shall be referred to the Central Government whose decision shall be final

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any employee of an insurer to the Corporation shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any Court, tribunal or other authority

SYNOPSIS

1 *Legislative changes*
2 *Object and scope*
3 *Alteration of terms and conditions of service*
4 *Power of alteration of the terms and conditions of service of the Corporation vis-a-vis the Central Government*
5 *Employees of the Corporation Status*
6 *Writ petition against Corporation, maintainability of*
7 *Sub section (2), whether offends Article 14 of the Constitution of India*
8 *Non applicability of sub section (1)*
9 *Termination of employment by Corporation*
10 *Decision as to whether an employee is a whole time employee or not, rests with the Central Government*
11 *Compensation under the Industrial Disputes Act, 1947, whether payable to employees on transfer of services*

1 Legislative changes —Sub section (2) was substituted by the Life Insurance Corporation (Amendment) Act XVII of 1957 for the former sub-section (2)

2 Object and scope —The object of the section is similar to that of section 9 By it the service of the existing employees of the insurer controlled business has vested in the Corporation stands transferred to latter as on the date of vesting, *i e*, 1st September, 1956

The provisions of this section apply to the wholetime employees of the insurer whose business has been taken over by the Corporation The effect of sub section (1) of this section is that the existing tenure, terms and conditions, rights and privileges as to pension and gratuity and other matters are guaranteed in the sense that they remain the same as under the previous employers unless either the employment is terminated or such terms and conditions are altered by the Corporation The guarantee does not go beyond this

Sub-section (2) on the other hand makes clear provision expressly empowering the Corporation to alter the remuneration and the other terms and conditions of service to such extent and in such manner as it thinks fit This sub-section also indicates that if the employee does not accept such alteration, then the Corporation can terminate his employment by giving three months' remuneration unless a shorter notice of termination is provided by the contract of service The only other statutory method dealing with the terms and conditions of service is by making regulations under section 49 (2)(bb) of this Act [1]

3 **Alteration of terms and conditions of service**—Sub section (1) of the section cannot be construed to mean that an unfettered power was conferred upon the Corporation to alter the terms and conditions of the service of the existing employees The section was intended by the Parliament to provide for the continuity of service of the existing employees on the same terms and conditions as those existent under private insurers Sub section (1) cannot be taken in isolation but its language must be construed *subjectae materiae* in the context of the provisions of sub-section (2) That sub-section as amended by the amending Act of 1957 confers a limited power upon the Central Government to alter the terms and conditions of its existing employees for two specific purposes and it is only for effecting those purposes that even the Central Government can alter the terms and conditions of service under that sub-section Even then the section has given a number of safeguards to the employee Therefore if it is to be held that sub-section (1) has conferred an unfettered power on the Corporation in the matter then sub-section (2) would become unnecessary and redundant That no such power is given to the Corporation is also borne out by section 9(1) [2]

4 **Power of alteration of the terms and conditions of service of the Corporation vis a vis the Central Government**—The Corporation could only alter the remuneration and the terms and conditions of service in the same manner and subject to the same conditions under which the previous insurers, whose life insurance business was taken over by the Corporation, could alter the same Under sub-section (2) of this section the Central Government is empowered to alter only the terms of service of the employees as to remuneration and not any other terms Thus, the Central Government has no power to alter the conditions of service relating to the working hours, leave, retirement, etc Moreover, the overriding powers conferred upon the Central Government have to be exercised for the purposes mentioned in sub-section (2), *viz*, for securing uniformity in the scales of remuneration, or in the interests of the Corporation and its policy holders. Such powers of the Central Government are not intended to be exercised merely by according a sanction of the act of the Corporation Thus, where the Corporation first alters the pay scales and other conditions of service

1 *K D Banerji v Life Insurance Corporation of India* 1961 Cal 285 *of India* I L R 37 Pat. 1957 B L. J R 786 1958 Pat 223

2 *P C Gogle v Life Insurance Corporation*

applicable to the employees whose services were transferred to the Corporation and subsequently obtains the approval of the Central Government for the change, the Central Government cannot be deemed to have acted under sub section (2) because the act contemplated by this sub section is not the act of according approval to so nothing done by the Corporation Hence under this section when the Central Government does not exercise the powers as envisaged therein but merely conveys its approval to the act already done by the Corporation, it could not be deemed to have exercised its powers [1]

5 Employees of the Corporation—Status —Indeed with effect from 1st of September, 1956, every employee of the insurer company becomes an employee of the Corporation and although very great powers have been given under this Act to the Central Government to regulate the constitution and the powers of the Corporation and even it may be assumed that the Central Government created this Corporation to carry on certain business activity, it does not follow therefrom that the Corporation is a department of the Central Government

From the examination of the provisions of the Act, it is evident that although much powers have been given to the Central Government with regard to the constitution, formation and the control of the Corporation, nonetheless the Corporation is a distinct legal entity created by the statute and has a perpetual succession with a right to hold and acquire property and it cannot be said to be either the employee or a department of the Central Government and the employees of the Corporation cannot be said to be in the service of the Central Government [2]

6 Writ petition against Corporation, maintainability of —The Corporation is a Public Corporation The acts purported to be done by the Corporation and by the Central Government are those done in the purported exercise of the statutory powers purported to have been conferred upon the Corporation and the Central Government and hence petition under Article 226 of the Constitution of India for the issue of a writ will lie against the Corporation Thus, where the powers of the Life Insurance Corporation of India and of the Central Government to alter under this section the pay scale and other conditions of service of the employees of the insurer units taken over by the Corporation are challenged, a petition for the issue of a writ is the proper remedy for the purpose An application under the Industrial Disputes Act, 1947, or the Payment of Wages Act is not an adequate legal remedy [3]

7 Sub section (2) whether offends Article 14 of the Constitution of India —A classification is reasonable even if it is not an arbitrary selection is made When numerous persons are [illegible] and brought under one admin[illegible] Corporation of India, it was impossible in the nature of things [illegible] equal treatment in the matter of [illegible]

1 *Christopher Pimenta v Life Insurance Corpn. of India* 60 Bom. L.R. 313 [illegible]
2 *Madan Mohan Lal v Uttar Pradesh* AIR 1961 All 384 *Iyer v Tata Engineering* (1949) 2 All E.R. [illegible] *United States Steel Corpn.* [illegible] Rep 103 [illegible] *Ezekiel* [illegible] *Savings* (1961) [illegible] *Life Insurance* [illegible] *Chairman* [illegible]
3 [illegible] *Life Insurance* [illegible]

employees, or to maintain them in the same scale of pay and in the same capacity as they had before nationalisation Therefore, classification had to be made having regard to the merits of the individual officers, their experience and the necessity of such officers, in the larger interest of the Corporation and the policy-holders

Article 14 of the Constitution permits a classification which is reasonable and even a single individual can be treated as a class by himself, if there are special circumstances or reasons applicable to him alone and not applicable to others and that the difference which will warrant a different classification need not be great It must be real and substantial and must bear some just and reasonable relation to the object

There is nothing in sub section (2) of this section which states that different scales of remuneration cannot be fixed between different classes of employees To differentiate between employees who are purely concerned with administration and those who are concerned with field work for the purposes of procuring business for the Corporation, seems to be eminently rational and warranted by law That being so the Categorisation Order, dated 30th December, 1957 or the "Blue Order" made under sub section (2) of this section is not *ultra vires* on the ground of discrimination The said Order is perfectly valid and is in accordance with law [1]

8 **Non applicability of sub section (1)**—Proviso to sub-section (1) lays down that the provisions in that section do not apply to those employees of insurers whose controlled business was taken over by the Corporation, who have, by notice in writing given to the Central Government before 1st September, 1956, intimated their intention of not becoming employees of the Corporation, that is to say, the employees of those insurers who have given notice in the manner aforesaid to the Central Government shall not become the employees of the Corporation In other words their services will not stand transferred to the Corporation as from the date of vesting as contemplated under sub section (1) of this section

9 **Termination of employment by Corporation**—The Corporation has been given the discretion to terminate the employment of an employee whose service is transferred to it on and from the date of vesting and when the terms and conditions of his service are altered by the Central Government in accordance with the provisions of sub-section (2) of this section and that employee does not choose to accept those altered terms and conditions But in so terminating his service, the Corporation must give him compensation equivalent to three months' remuneration unless his contract of service provides for a shorter notice of termination and in that case he may be paid the remuneration for such shorter period in lieu of notice However, such compensation must not affect his pension, gratuity, provident fund money or any other benefit to which he is entitled under his contract of service; that is to say, he will be paid his pension, gratuity, provident fund money orother benefits in addition to the said compensation

10 **Decision as to whether an employee is a whole time employee or not rests with the Central Government**—Sub section (3) lays down that where any question arises as to whether an employee whose service has been so transferred to the Corporation, is a whole time employee or is

1 *Sunil Kumar v Zonal Manager E Z L I Corpn* 1962 Cal 75 *A D Banerji v Life Ins Corpn of India* 1961 Cal 285, *Chaturbhuj Lal Parayar v Divisional Manager Life Insurance Corporation of India* Misc Judicial Cases Nos 164 and 778 of 1958 dated 12 1 60 unreported Patna High Court *see also P C Gayle v Life Ins Corpn* 1963 1 at 223 *supra Paras Nath v Life Ins Corpn of India* 1961 B L J R 435 1961 Pat 176

mainly in connection with the controlled business of an insurer immediately before the 1st September, 1956, such question must be referred to the Central Government for decision The Corporation has no power to decide such a question When the Central Government decides such a question referred to it, its decision has been made final with the result that neither the Corporation nor the employee concerned shall have power to question the said decision in any way

11 Compensation under the Industrial Disputes Act, 1947, whether payable to employees on transfer of services —Sub-section (4) lays down that the transfer of the services of any employee of an insurer to the Corporation shall not entitle him to any compensation under the Industrial Disputes Act, 1947 (XIV of 1947) or under any other law for the time being in force The sub-section further provides that no such claim must be entertained by any Court, tribunal or other authority

After taking over various establishments of the Assurance Companies doing life insurance business, the establishment run by the Life Insurance Corporation is a unified establishment and the old establishments have not retained their identity There has been such a merger of the various establishments that it is not possible to say that any old establishment as such has continued It is the scheme of the Industrial Disputes Act that any awards or settlements arrived at thereunder would bind not merely the then employees but future employees too This binding nature of the settlements and awards continues only so long as it can be said that the establishment continues With the extinction of the establishment, the binding nature of the settlements and awards would cease From the use of the word "establishment" in the Industrial Disputes Act, it is fairly clear that the establishment must exist in some definite and identifiable form Hence, the awards and settlements which governed the rights and obligations of the employers and the employees before the establishments were taken over by the Corporation, would cease to bind the Corporation even under section 18(c) of the Industrial Disputes Act [1]

Transfer of services of existing employees of chief agents of insurers to the Corporation in certain cases

12 Subject to such rules as the Central Government may make in this behalf, every whole time salaried employee of a chief agent of an insurer whose controlled business has been transferred to and vested in the Corporation and,—

(a) who was employed by the chief agent wholly or mainly in connection with the controlled business of the insurer ,

(b) whose salary on the appointed day did not exceed five hundred rupees per mensem , and

(c) who was in the employment of the chief agent for a continuous period of not less than one year immediately before the appointed day ,

shall, on and from the appointed day, become an employee of the Corporation and the provisions of section 11 shall, so far as may be, apply in relation to such employee as they apply in relation to a wholetime employee of the insurer

1 *Christopher Pereira v Life Ins Corpn of India*, 1958 Bom 451 at pp 456-457

Provided that this section shall not apply except in cases where the chief agent of the insurer was required under the terms of his contract the with the insurer to render the prescribed services to policy holders of the insurer

Explanation —In the case of a whole-time salaried employee of a chief agent who has been retrenched by the chief agent on or after the 19th day of January, 1956, the provisions of this section shall apply as if for the words "the appointed day" the words and figures "the 19th day of January, 1956" had been substituted

SYNOPSIS

1 *Applicability* — *of a chief agent to become the em*
2 *Every whole-time salaried employee* — *ployee of the Corporation*

1 Applicability —The provisions of this section apply only to whole-time salaried employees of chief agents of insurers whose controlled business has been transferred to and vested in the Corporation and not to any other person But such employees must answer the descriptions mentioned in the section, and the chief agent was to render the prescribed services to policy holders of the insurer

2 Every wholetime salaried employee of a chief agent to become the employee of the Corporation —Ordinarily any employee of a chief agent, whether salaried or not, or whether wholetime or not, is not an employee of an insurer on whose behalf the chief agent was appointed or that the latter acted on behalf of an insurer The chief agent, as in the case of an ordinary agent, is responsible to the insurer who appoints him but any person appointed by him is not responsible to the insurer nor the latter is answerable for any acts of such a person who stands in the position of a sub-agent

The words 'chief agent' have not been defined in this Act but the expression used in this section must be given the same definition as given in section 2 (5A) of the Insurance Act, 1938, that is, he is not a salaried employee of the insurer but performs any administrative and organising functions for the said insurer and procures life insurance business for the latter by employing or causing to be employed insurance agents on behalf of the insurer in consideration for certain commission as provided in section 42C of the said Act

This section provides that every wholetime salaried employee of a chief agent answering the following descriptions, *viz*, (*i*) that he must be employed by the chief agent wholly or mainly in connection with the controlled business of the insurer, (*ii*) that his salary on 1st September, 1956, must not exceed Rs 500 per month, (*iii*) that he must be in the employment of the chief agent for a continuous period of not less than one year immediately before the said date, shall become the employee of the Corporation and the provisions of section 11 regarding terms and conditions of service shall be applicable to him as they apply to a wholetime employee of the insurer

In the proviso to this section, it has also been provided that for the applicability of the provision of this section, the chief agent of the insurer must, under the terms of his contract with the insurer, have to render the prescribed services to policy holders of the insurer Moreover, the applicabi

lity will be subject to such rules as the Central Government may make in that behalf In other words, the answering of the three aforesaid descriptions of a whole time salaried or whole-time employee of a chief agent will not entitle him to become an employee of the Corporation on the vesting of the controlled business but that his becoming an employee of the Corporation will depend upon whether he comes within the rule made by the Central Government or the chief agent under whose employment he was required to render the prescribed services to policy holders of the insurer

By the Explanation added to the section a wholetime salaried employee of a chief agent who has been retrenched by the latter on or after the 19th day of January, 1956, will get the benefit of becoming an employee of the Corporation provided the conditions aforesaid are satisfied in his case also

The provisions of this section shall apply only in respect of the employees of a chief agent of an insurer who was, under the terms of his contract with the latter, required to render the following services to the policy holders, namely—

(*a*) collection of premiums from the policy holders in respect of policies secured through his insurance agents in the area for which he was appointed chief agent ; and

(*b*) issuing of final (pukka) receipts for the premiums so collected (Rule 11, Life Insurance Corporation Rules, 1956)

This section was not in the Bill but was inserted by the Select Committee with the object that the existing employees of the chief agents of insurers whose business was taken over by the Corporation should be absorbed and their services transferred to the Corporation in cases mentioned above

Duty to deliver possession of property and documents relating thereto

13 (1) Where any property appertaining to the controlled business of an insurer has been transferred to and vested in the Corporation under this Act, then,—

(*a*) every person, in whose possession, custody or control, any such property may be, shall deliver the property to the Corporation forthwith ,

(*b*) any person who, on the appointed day, has in his possession, custody or control any books, documents, or other papers relating to such controlled business, shall be liable to account for the said books, documents and papers to the Corporation, and shall deliver them to the Corporation or to such person as the Corporation may direct

(2) In particular, all the assets of an insurer appertaining to life insurance business held in deposit with the Reserve Bank of India under the Insurance Act, 1938, in trust shall be transferred to the Corporation

3 Without prejudice to the other provisions contained in this section, it shall be lawful for the Corporation to take all necessary steps for securing possession of all properties which have been transferred to and vested in it under this Act

This section enjoins on every person and any person in whose possession, custody or control any property, books, documents or other papers of the insurer in respect of the latter's controlled business were, to deliver the same to the Corporation forthwith It also makes the person accountable for the said books, documents and papers in whose possession, custody or control they were and the Corporation may direct such person to deliver them either to the Corporation or to such person as it may direct

It even enjoins on the Reserve Bank of India or the trustees to deliver all the assets of the insurer in respect of the life insurance fund held in deposit by the said Bank or in trust by the said trustees to the Corporation

Notwithstanding the duties imposed on every person and any person, and the Reserve Bank of India, or the trustees as aforesaid, this section also makes it lawful for the Corporation to take all necessary and proper steps for securing possession of all properties of the insurer whose controlled business has vested in it under the provisions of this Act

Where the insurer is a Company, every person and any person will include the directors, the managing director, the managing agents, the manager, the secretary, the principal officer or any person in whose possession, custody or control the said property, books, documents and papers must be deemed to be

Penalty for non-compliance with the provisions of this section has been provided for in section 40 of the Act (*See* section 40, *post*)

Power of Corporation to modify contracts of life insurance in certain cases

14 The Corporation may, having regard to the financial condition on the appointed day of any insurer whose controlled business has been transferred to and vested in the Corporation, reduce the amounts of insurance under contracts of life insurance entered into by such insurer before the 19th day of January, 1956, in such manner and subject to such conditions as it thinks fit

Provided that no such reduction shall be made except in accordance with a scheme prepared by the Corporation in this behalf and approved by the Central Government

This section empowers the Corporation to reduce the contracts of life insurance entered before 19th January, 1956, when the financial condition of the insurer, whose controlled business was taken over by it as on 1st September, 1956, may justify But before doing so, the Corporation has to prepare a scheme for the same and has to get the said scheme approved by the Central Government [1]

1 Under the Insurance Act 1938 for power of the Controller to reduce insurance contracts *see* section 36 for power of the Court to reduce such contracts, *see* section 61 and power to reduce insurance contracts in case of a Provident Society *see* section 89 of that Act and Notes to those sections

Right of Corporation to seek relief in respect of certain transactions of the insurer

15 (1) Where an insurer whose controlled business has been transferred to and vested in the Corporation under this Act has, at any time within five years before the 19th day of January, 1956,—

(*a*) made any payment to any person without consideration,

(*b*) sold or disposed of any property of the insurer without consideration or for an inadequate consideration,

(*c*) acquired any property or rights for an excessive consideration,

(*d*) entered into or varied any agreement so as to require an excessive consideration to be paid or given by the insurer,

(*e*) entered into any other transaction of such an onerous nature as to cause a loss to, or impose a liability on, the insurer exceeding any benefit accruing to the insurer,

(*f*) if a composite insurer, transferred any property from his life department to his general department without consideration or for an inadequate consideration,

and the payment, sale, disposal, acquisition, agreement or variation thereof or other transaction or transfer was not reasonably necessary for the purpose of the controlled business of the insurer, or was made with an unreasonable lack of prudence on the part of the insurer, regard being had in either case to the circumstances at the time, the Corporation may apply for relief to the tribunal in respect of such transaction, and all parties to the transaction shall, unless the tribunal otherwise directs, be made parties to the application

(2) The tribunal may make such order against any of the parties to the application as it thinks just having regard to the extent to which those parties were respectively responsible for the transaction or benefited from it and all the circumstances of the case

(3) Where an application is made to the tribunal under this section in respect of any transaction and the application is determined in favour of the Corporation, the tribunal shall have exclusive jurisdiction to determine any claims outstanding in respect of the transaction.

SYNOPSIS

1 *Object and scope*
2 *Circumstances under which the Corporation may apply for relief*
3 *Powers of the tribunal*

1 **Object and scope**—The object of the section in the Corporation to approach the tribunal constituted under section Act for certain reliefs is to obtain speedy remedy therefor from t

The section has a far-reaching consequence on the ordinary law of the land in that the Corporation has been given the power to question the transactions of the nature mentioned in clauses (*a*) to (*f*) of sub section (1) at any time within five years before the 19th day of January, 1956, although the right to challenge such transaction in some cases might have been lost by the law of limitation prescribed therefor, and further also the tribunal constituted under the Act being also invested with power to grant the said reliefs and to determine claims outstanding thereon which, under the ordinary law of the land, could not be so granted and determined by any Court of justice

2 **Circumstances under which the Corporation may apply for relief**—Three conditions must exist before the Corporation can approach the tribunal for relief, namely, (1) the transaction must be either illegal or it is an outcome of a hard and unconscionable bargain, (2) the transaction was not reasonably necessary or was made with an unreasonable lack of prudence, and (3) the transaction to be proceeded against must have occurred within five years before 19th January, 1956 The transaction to be illegal must be in respect of any payment to any person or sale or disposal of any property of the insurer being without consideration The transaction to be hard and unconscionable must be in respect of (*i*) any property being sold or disposed of, or being acquired for inadequate or excessive consideration, as the case may be, (*ii*) any agreement or contract or arrangement being entered into or varied for an excessive consideration or resulting in loss to, or imposing a liability on, the insurer exceeding any benfit accruing to the latter

3 **Powers of the tribunal**—The powers conferred on the tribunal by this section are—

(*i*) it may direct the Corporation to make such persons as parties to the application as it may deem fit ;

(*ii*) it may make such order against any of the parties to the application as it thinks just and proper in considering all the circumstances of the case including a finding as to the extent to which those parties were respectively responsible for the transaction or benefited from it ; and where the application is determined in favour of the Corporation ;

(*iii*) it must determine any claims outstanding in respect of the transaction, the jurisdiction for determination of such outstanding claims being exclusively given to the tribunal

Compensation for acquisition of controlled business

16 (1) Where the controlled business of an insurer has been transferred to and vested in the Corporation under this Act, compensation shall be given by the Corporation to that insurer in accordance with the principles contained in the First Schedule

(2) The amount of the compensation to be given in accordance with the aforesaid principles shall be determined by the Corporation in the first instance, and if the amount so determined is approved by the Central Government, it shall be offered to the insurer in full satisfaction of the compensation payable to him under this Act, and if, on the other hand, the amount so offered is not acceptable to the insurer, he may, within such time as may be prescribed for the purpose, have the matter referred to the tribunal for decision

SYNOPSIS

1 *Object and scope*
2 *Principles for determining compensation*
3 *Time prescribed for reference*
4 *Compensation payable in cash*

1 Object and scope —The object of the section is to provide compensation to be paid to the insurer whose controlled business stands transferred to and vested in the Corporation by virtue of this Act The compensation is payable according to the principles laid down in the First Schedule to the Act In the first instance, the determination of the compensation to be payable is left in the hands of the Corporation It has to determine the said compensation according to the principles set out in the said Schedule and thereafter it will place the amount so determined showing the principles applied for approval of the Central Government Lastly, the Corporation has to offer the said amount so approved by the Central Government to the insurer concerned in full satisfaction of the compensation payable to him under the Act The section also confers power on the insurer concerned who does not agree to accept the amount of the compensation to have the matter referred to the tribunal for decision But he must refer the matter within the time prescribed for making such reference, otherwise his remedy will be barred

2 Principles for determining compensation —The principles for determining the compensation payable to the insurer concerned whose controlled business has been taken over by the Corporation have been laid down in the First Schedule to the Act For the purposes of such determination, the said Schedule has been divided into three parts, namely, A, B and C Part A relates to an insurer who has a share capital on which dividend or bonus is payable and who has allocated as bonus to policy-holders the whole or any part of the surplus as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act, 1938 in respect of the last actuarial investigation relating to his controlled business as at a date earlier than the 1st day of January, 1955, Part B relates to an insurer who has a share capital on which dividend or bonus is payable but who has not made any such allocation as is referred to in Part A above, and Part C relates to an insurer, *(a)* who has no share capital, or *(b)* who has a share capital on which a dividend or bonus is not payable For the computation of the amount, two alternative methods have been given in paragraphs 1 and 2 in respect of Part A insurer, and the method more advantageous to the insurer should be adopted In respect of Part B insurer, the computation has to be made in accordance with paragraphs 3 and 4 contained in that part and in respect of Part C insurer, two methods have been adopted in respect of two kinds of insurers mentioned in that part [1]

3 Time prescribed for reference —The time within which a reference has to be made to the tribunal by the insurer concerned in respect of compensation offered to him and the same being unacceptable to him, is as follows

(i) in case of Part A insurer or Part C insurer, within three months from the date on which compensation determined by the Corporation is offered to the insurer concerned, and

(ii) in case of Part B insurer, within six months from the date on which the compensation determined by the Corporation is offered to the insurer

1 For details of such computation, *see* First Schedule *post*

But the tribunal has been given the discretion to admit any such reference beyond the said period of limitation, if the insurer making the reference, satisfies the tribunal that he had sufficient cause for not making the reference within the said period [1]

4 **Compensation payable in cash** —The compensation payable under the Act shall be paid in cash (Rule 13, Life Insurance Corporation Rules, 1956)

Constitution of tribunals

17 (1) The Central Government may, for the purposes of this Act, constitute one or more tribunals and each of the tribunals shall consist of three members appointed by the Central Government, one of whom shall be a person who is, or has been a Judge of a High Court or has been a Judge of the Supreme Court, and he shall be the Chairman thereof

(2) A tribunal may choose one or more persons possessing special knowledge of any matter relating to any case under inquiry to assist the tribunal in determining any question which has to be decided by it under this Act

(3) Every tribunal shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters—

(*a*) summoning and enforcing the attendance of any person and examining him on oath ,

(*b*) requiring the discovery and production of documents ,

(*c*) receiving evidence on affidavits ,

(*d*) issuing commissions for the examination of witnesses or documents

(4) Every tribunal shall have power to regulate its own procedure and decide all matters within its competence, and may review any of its decisions in the event of there being a mistake on the face of the record or correct any arithmetical or clerical error therein

SYNOPSIS

1 *Object and scope*
2 *"Tribunals", meaning of*
3 *Jurisdiction of the tribunal*
4 *Tribunals powers in deciding a matter under the Act*

1 **Object and scope** —The object of the section is to confer powers on the Central Government to constitute one or more tribunals for the purposes of this Act The section lays down that each tribunal must consist of three members who have to be appointed by the Central Government and one of such members must be a (i) who is or has been a Judge of a High Court, or (ii) has of the Supreme Court and (iii) who must be the of t The tribunal has

1 *See* Rule 1

been given the power to choose one or more persons possessing special knowledge to assist it in the determination of any question referred to it for decision under this Act The tribunal has also been invested with the powers of a Civil Court in the matters of (*i*) issuing summons, (*ii*) enforcing attendance of witnesses, (*iii*) examining them on oath, (*iv*) requiring the discovery and production of documents, (*v*) receiving evidence on affidavits, and (*vi*) issuing commissions for the examination of witnesses or documents The tribunal has also been given the powers (*i*) to regulate its own procedure, (*ii*) to decide all matters within its competence, (*iii*) to review its decision on the ground of any mistake apparent on the face of the record, and (*iv*) to correct any arithmetical or clerical errors therein

The Central Government by its notification has constituted such tribunal [1]

2 "Tribunal", meaning of—'Tribunal' does not mean the same thing as 'Court', but it is adorned with similar trappings as Court, but strictly not coming within the definition of 'Court' The tribunal is an adjudicating body constituted by the Government and is invested with judicial as distinguished from purely administrative or executive functions [2] A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites (*i*) the presentation (not necessarily orally) of their cause by the parties to the dispute, (*ii*) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence, (*iii*) if the dispute between them is a question of law, the submission of legal argument by the parties and (*iv*) a decision which disposes the whole matter by a finding upon the facts and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law [3]

3 Jurisdiction of the tribunal under the Act—The tribunal may exercise jurisdiction in the whole of India and shall have power to decide or determine all or any of the following matters, namely

(*i*) any question whether of title or of liability or of any nature whatsoever in relation to the assets and liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation ,

(*ii*) any question under section 10 or under any rules made thereunder whether any property is or was held or used by a composite insurer for the purposes of his controlled business ,

(*iii*) every application made under section 15 and all claims outstanding in respect of any transaction which may be the subject-matter of any such application determined in favour of the Corporation ,

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1 *Vide* S. R O No 1734 , dated 25th May 1957 *Gazette of India* ,

2 *See Bharat Bank Ltd* v *Employees of Bharat Bank, Ltd* , 1950 S C R 459 1950 S C 188 , *Durga Shankar* v *Raghuraj Singh*, 1954 S C. 520

3 *Cooper* v *Wilson*, (1937) 2 K. B 309 at p. 340 , *see* also *Huddarat Parker and Co* v *Morehead*, (1909) 8 C L. R 330 at p 357 where Griffith C J observed thus the exercise of this (judicial) power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action;

(*iv*) all claims for compensation payable under the Act to insurers whose controlled business has been transferred to and vested in the Corporation, and all matters connected with the determination, payment and distribution of such compensation;

(*v*) all claims for compensation payable under the Act to chief agents or special agents for contracts terminated under section 36, and all matters connected with the termination, payment and distribution of such compensation;

(*vi*) such supplemental, incidental or consequential matters which the tribunal may deem it expedient or necessary to decide or determine for the purpose of securing that the jurisdiction vested in it under this Act and in respect of matters referred to above is fully and effectively exercised [1]

4 **Tribunal's powers in deciding a matter**—Every tribunal deciding a matter under this Act shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (V of 1908) with regard to the following—

(*a*) it shall have power to summon and enforce the attendance of any person and examine him on oath under the provisions of Orders V, XVI and X of the said Code;

(*b*) it shall have power to require the discovery and production of documents under Order XI of the said Code;

(*c*) it shall have power to receive evidence on affidavits under Order XIX of the said Code;

(*d*) it shall have power to issue commissions for the examination of witnesses or documents under section 75 and Order XXVI of the said Code

In the aforesaid matters the tribunal has to be guided by the rules contained in those Orders of the Code [2]

CHAPTER V

Management

Offices branches and agencies

18 (1) The Central office of the Corporation shall be at such place as the Central Government may, by notification in the official *Gazette*, specify

(2) The Corporation shall establish a zonal office at each of the following places, namely, Bombay, Calcutta, Delhi, Kanpur and Madras and, subject to the previous approval of the ntral Government, may establish such other zonal o ces as it t

(3) The territori f each e such as may be specified by the Corpc

(4) There may d as nal offices branches in each zone nag

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1 Rul. 12A, Rules 1951 No G S R

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The management of the Corporation will be made through a Central Office under which there will be five zonal offices, each at Calcutta, Bombay, Delhi, Kanpur and Madras and under these Zonal Offices, there will be divisional offices and branches

This section empowers the Central Government to specify the place where the Central Office of the Corporation will be situate by notification in the official *Gazette* It enjoins on the Corporation to establish five Zonal Offices each at Bombay, Calcutta, Delhi, Kanpur and Madras with powers to establish other zonal offices with the previous approval of the Central Government It also enjoins on the Corporation to specify the territorial limits of each zone It also empowers the Zonal Manager to establish as many divisional offices and branches in each zone as he thinks fit

By virtue of the powers conferred by sub-section (1) of this section the Central Government has specified Bombay as the place where the Central Office of the Corporation should be situate [1]

Committees of the Corporation

19. (1) The Corporation may entrust the general superintendence and direction of its affairs and business to an Executive Committee consisting of not more than five of its members and the executive committe may exercise all powers and do all such acts and things as may be delegated to it by the Corporation

(2) The Corporation may also constitute an Investment Committee for the purpose of advising it in matters relating to the investment of its funds, and the Investment Committee shall consist of not more than seven members of whom not less than three shall be members of the Corporation and the remaining members shall be persons (whether members of the Corporation or not) who have special knowledge and experience in financial matters, particularly, matters relating to investment of funds

(3) The Corporation may constitute such other committees as it may think fit for the purpose of discharging such of its functions as may be delegated to them

This section permits in particular, the Corporation to entrust the general superintendence and direction of its affairs and business to an Executive Committee and to constitute an Investment Committee to advise it in matters of investment of its funds and generally to constitute such other committees according to its discretion with a view to discharge such of its functions as may be delegated to them

The Executive Committee shall consist of not more than five members of the Corporation and the Investment Committee, if formed, must consist of not more than seven members of whom at least three must be the members of the Corporation and the rest must have special knowledge and experience in financial matters specially regarding investment of funds [2]

1 *Vide* S R O 1939 dated the 30th August 1956 *Gazette of India* Extraordinary Part II, Sec. 3, No 249, dated the 30th August, 1956

2. *See* also Notes under section

Managing directors

20. The Corporation may appoint one or more persons to be the managing director or directors of the Corporation, and every managing director shall be a wholetime officer of the Corporation, and shall exercise such powers and perform such duties as may be entrusted or delegated to him by the Executive Committee or the Corporation

This section confers discretionary power on the Corporation to appoint one or more managing director or directors who can be appointed from any person but must be a wholetime officer of the Corporation and his functions will be those as may be delegated to him either by the Executive Committee or the Corporation His powers and functions must not be equated nor confused with those of a Managing Director of a Company appointed under the Companies Act, 1956

Corporation to be guided by the directions of the Central Government

21 In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing, and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final

Although the Corporation has been made an autonomous body under the Act to perform its functions as enjoined in section 6 of the Act and to manage its affairs and business according to sections 18 to 20, still the Central Government has been given certain powers over its functions and management in directing matters of policy concerning public interest and in case any question arises as to whether a direction relates to matter of policy involving such interest the decision made by the Central Government thereon has been made final Such directive of policy has to be given by the Central Government in writing and the Corporation has no option but to carry out those directives

Zonal managers

22 (1) The Corporation may entrust the superintendence and direction of the affairs and business of a zonal office to a person, whether a member or not, who shall be known as the Zonal Manager and the Zonal Manager shall perform all such functions of the Corporation as may be delegated to him with respect to the area within the jurisdiction of the zonal office

(2) The Corporation may constitute for each zone a Board consisting of such number of persons as it thinks fit to appoint thereto for the purpose of advising the Zonal Manager in respect of such matters as are referred to it under the regulations made by the Corporation

(3) The Corporation shall constitute in the prescribed manner for each zonal office an Employees and Agents Relations Committee consisting of such number of persons as it thinks fit and every such committee shall consist of representatives of the Corporation and of its employees and agents, so however, that the number of representatives of the employees and agents on the committee shall not be

less than the number of representatives of the Corporation and it shall be the duty of the Committee to advise the Zonal Manager on matters which relate to the welfare of the employees and agents of the Corporation or which are likely to promote and secure amity and good relations between them and the Corporation

SYNOPSIS

1 *Object and scope*
2 *Zonal Manager, his powers and functions*
3 *"Zonal office," meaning of*
4 *Board, its constitution and functions*
5 *"Employees and Agents Relations Committee," its constitution and functions*
—*(A) Representatives to be nominated*
—*(B) Terms of office of members*
—*(C) Casual vacancies*

1 Object and scope —The object of the section is to ensure better management of the affairs and business of the Corporation in each zone Considering the vast area over which the central office has to exercise its functions, the provision like the one provided by the section is almost a necessity The section confers discretionary powers on the Corporation in two matters in respect of a zone, namely, (*i*) to entrust the superintendence and direction of the affairs and business of a zonal office to the Zonal Manager, and (*ii*) to constitute a Board to advise the Zonal Manager in matters referred to it as specified in the regulations made by the Corporation Besides, the section has made it obligatory on the Corporation to constitute for each zonal office an "Employees and Agents Relations Committee" to advise the Zonal Manager regarding matters of employees' and agents' welfare or matters which are likely to promote goodwill and best of relations between them and the Corporation

2 Zonal Manager, his powers and functions —A Zonal Manager may be a member of the Corporation or he may not be a member His chief functions are (*i*) to superintend and direct the affairs and business of the zonal offiee of which he has been given the charge and (*ii*) to perform all such functions as may be delegated to him by the Corporation with respect to the area within the jurisdiction of the zonal office

The power of superintendence and direction given to the zonal manager by this section extends to all administrative matters concerning the zone including the subordinate offices, *viz*, a branch and a divisional office He has also a legal duty cast upon him to see that the affairs are conducted properly and in accordance with law Thus, if any employee or servant acts in a manner which the Zonal Manager considers is detrimental or injurious to the affairs and business which is entrusted to his superintendence and direction, he will be certainly within his powers to take such action as is deemed suitable by him Hence, he has the power to suspend an employee in a branch office under his jurisdiction pending enquiry into charges levelled against such employee or servant [1]

3 "Zonal office," meaning of —The expression "zonal office," used in this section, will not only include the establishment known by that name but also the establishment attached to every subordinate office

1 *Kedar Nath* v *Life Insurance Corporation of India*, 1961 A L J 673 : (1961) 2 Lab L J 700: 1961 All 606

controlled by the zone Hence, a branch office and a divisional office being parts of the zone will be included with in the expression "Zonal office"[1]

4 Board, its constitution and functions —The Board has to be constituted by the Corporation for each zone It will consist of such number of persons as the Corporation may appoint thereto Its chief function is to advise the Zonal Manager in respect of matters as are referred to it under the regulations made by the Corporation

5 "Employees and Agents Relations Committee," its constitution and functions —The Corporation has to constitute for each Zonal office an Employees and Agents Relations Committee in the prescribed manner Such committee is to consist of such number of persons as the Corporation may decide but amongst its members there must be the representatives of the Corporation on the one hand and the representatives of its employees and agents on the other, in the proportion that the representatives of the latter must not be less than the representatives of the former, that is to say, the representatives of the employees and agents in the Committee must be either equal to or more than the representatives of the Corporation

The Committee's chief functions are to advise the Zonal Manager on matters (i) which relate to the welfare of the employees and agents, or (ii) which are likely to promote and secure amity and good relations between them and the Corporation

(a) *Representatives to be nominated* —Representatives to the Committee both of the Corporation and the employees and agents have to be nominated by the Corporation

(b) *Terms of office of members* —A member of the Committee shall hold office for a period of two years but he shall be eligible for being re nominated

(c) *Casual vacancies* —If any casual vacancy occurs in the case of a member of the Committee by death or resignation of any member or otherwise, the Corporation has to fill up the vacancy as soon as may be after such vacancy occurs A member appointed to fill a casual vacancy shall continue in office for the unexpired term of his predecessor

Staff of the Corporation

23 (1) For the purpose of enabling it to discharge its functions under this Act, the Corporation may employ such number of persons as it thinks fit

(2) Every person employed by the Corporation or whose services have been transferred to the Corporation under this Act, shall be liable to serve everywhere in India

This section gives discretionary power on the Corporation to employ such number of persons as it may think necessary to enable it to discharge its functions under this Act

The section also makes it obligatory for any employee of the Corporation, whether appointed by it or whether his services have been transferred to it according to the provisions of section 11 to serve anywhere in India, *i e*, the employees' services have been made transferable from one zone to another or from one division to another or from one branch to another and also to the central office of the Corporation

1 *Ardar Nath v Life Insurance Corporation of India*, 1961 A L J 673 : (1961) 2 Lab L J 700 : 1961 All 606

An employee's nature of duties done by him and not his designation or his getting regular monthly salary is the determining factor in deciding what post he holds Even a Branch Manager can be classified as a "field officer" within the meaning of clause 2 (*e*) of the Life Insurance Corporation field officers [1] Where an employee prior to the categorisation order, dated 30th December, 1957, was acting as an Inspector of Agencies, he becomes a "field officer" within the meaning of the said clause 2 (*e*) after the said order comes into force It is not required that he should be fitted into the sale of pay after the Regulations are made [2] The rank of an Inspector of the Corporation is subordinate to that of the Divisional Superintendent in a controlled business which has been transferred to the Corporation The Corporation is not justified to reduce a person who was working as a Divisional Superintendent to the rank of an Inspector under it [3] The employees of the Corporation cannot be said to be in the service of the Central Government [4]

CHAPTER VI

Finance, Accounts and Audit

Funds of the Corporation

24 The Corporation shall have its own fund and all receipts of the Corporation shall be credited thereto and all payments of the Corporation shall be made therefrom

The Corporation being an autonomous body and being a legal entity it must have its own fund and whatever earnings the Corporation may make must be credited to that fund and whatever expenses it may incur, the same has to be paid out of the said fund [5]

Audit

25. (1) The accounts of the Corporation shall be audited by auditors only qualified to act as auditors of companies under the law for the time being in force relating to companies, and the auditors shall be appointed by the Corporation with the previous approval of the Central Government and shall receive such remuneration from the Corporation as the Central Government may fix

(2) Every auditor in the performance of his duties shall have at all reasonable times access to the books, accounts and other documents of the Corporation.

(3) The auditors shall submit their report to the Corporation and shall also forward a copy of their report to the Central Government

This section lays down that the accounts of the Corporation have got to be audited by auditors appointed by the Corporation with the prior approval of the Central Government The auditors have to be given access to the books, accounts and other documents of the Corporation during the

1 Alteration of remuneration and other terms and conditions of service order 1957, *Jurat Nath v Life Insurance Corporation* 1961 Pat 176

2. *Sunil Kumar v Zonal Manager Corporation* 1962 Cal 75 *E Z L I*

3 *P C Goyle v Life Insurance Corporation* 1958 Pat 223

4 *Madan Mohan Lal v Om Prakash* 1957 All 383

5 *See* section 5 *supra*

course of their audit at all reasonable hours The duty of the auditors is to submit their report to the Corporation and also to forward its copy to the Central Government

The qualification of the auditor are that he must be competent to audit the accounts of the companies under the Companies Act, 1956, that is to say, he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (XXXVIII of 1949)[1] His remuneration has to be fixed by the Central Government and is payable by the Corporation

Actuarial valuation

26 The Corporation shall, once at least in every two years, cause an investigation to be made by actuaries into the financial condition of the business of the Corporation, including a valuation of the liabilities of the Corporation, and submit the report of the actuaries to the Central Government

It is obligatory on the Corporation to cause an investigation to be made by actuaries into the financial condition of the business of the Corporation once at least in every two years including a valuation of its liabilities and to submit such report to the Central Government

In the absence of any provisions in the Act as to the method to be adopted in the preparation of actuarial report and abstract, the provisions contained in section 13 of the Insurance Act, 1938, should obviously be followed, as it may be made applicable to such investigation into the financial condition of the business of the Corporation [2]

Annual report of activities of Corporation

27 The Corporation shall, as soon as may be, after the end of each financial year, prepare and submit to the Central Government in such form as may be prescribed a report giving an account of its activities during the previous financial year, and the report shall also give an account of the activities, if any, which are likely to be undertaken by the Corporation in the next financial year

This section also makes it obligatory on the Corporation to prepare an annual report of the Corporation and to submit the same to the Central Government The report must be made at the end of each financial year, *i e*, from April to 31st March and not the calendar year as is generally in vogue with the insurers The report must give an account of the activities of the Corporation carried on during the previous year but are likely to be undertaken in the next financial year

The annual report to be submitted by the Corporation to the Central Government under this section regarding its activities during the previous financial year shall *inter alia* contain particulars in respect of the following matters, namely —(*i*) the extent of the new business, (*ii*) the total amount of business in force, (*iii*) the total amount of claims, (*iv*) nature of investment, and (*v*) the accounts [3]

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1 *See* section 226 of the Companies Act 1956
2 *See* Notes under section 13 Insurance Act 1938
3 Rule 17 Life Insurance Corporation Rules 1956

Surplus how to be utilised

28. If, as a result of any investigation undertaken by the Corporation under section 26 any surplus emerges, not less than 95 per cent of such surplus shall be allocated to or reserved for the policy-holders of the Corporation and the remainder may be utilized for such purposes and in such manner as the Central Government may determine

Any surplus emerging out of the actuarial valuations undertaken under the preceding section 26 has to be either allocated or reserved for the policy-holders to the extent of 95 % of it and the rest to be utilized, *viz*, 5 % for purposes and in such manner which the Central Government is to determine

Reports to be laid before Parliament

29 The Central Government shall cause the report of the auditors under section 25, the report of the actuaries under section 26 and the report giving an account of the activities of the Corporation under section 27 to be laid before both Houses of Parliament, as soon as may be, after each such report is received by the Central Government

The section has made it obligatory on the Central Government to lay before both Houses of Parliament, the auditors' report, the actuary's report and the annual report of the Corporation as soon as after each such report has been received by the Central Government

CHAPTER VII

Miscellaneous

Corporation to have the exclusive privilege of carrying on life insurance business

30 Except to the extent otherwise expressly provided in this Act, on and from the appointed day, the Corporation shall have the exclusive privilege of carrying on life insurance business in India and on and from the said day any certificate of registration under the Insurance Act held by any insurer immediately before the said day shall cease to have effect in so far as it authorises him to carry on life insurance business in India

The section confers a monopoly on the Corporation to carry on life insurance business in India on and from 1st September, 1956, except to the extent as provided in the succeeding section 31 It further purports to cancel the certificate of registration issued to any insurer under section 3 or section 70 of the Insurance Act, 1938, and held by him immediately before the said date in so far as the said certificate authorises him to carry on life insurance business in India The certificate issued to him in respect of other classes of insurance business remains unaffected The provisions in the section have been made consistent with the object of the Act which is as follows "To ensure absolute security to the policy holder in the matter of his life insurance protection, to spread insurance much more widely and in particular to the rural areas, and as a further step in the direction of more effective mobilisation of public savings Government have decided to nationalize life insurance business in India a Life Insurance Corporation will be set up, with a share capital provided entirely by the Central Government, which will undertake life insurance business in India

monopoly and into this Corporation will be integrated all the Insurance Companies now engaged in life business, as also the organisations functioning under the Central or State Governments and conducting such business for the benefit of the public "[1]

Exception in case of insurance business in respect of persons residing outside India

31 (1) Notwithstanding anything contained in section 30 or in the Insurance Act, the Central Government may, by order, permit any person who has made an application in that behalf, to carry on life insurance business in India in respect of the lives of persons ordinarily resident outside India, subject to such restrictions and conditions as may be specified in the order and any such order shall be deemed to have effect as if it were a certificate of registration issued by the Controller to such person under section 3 of the Insurance Act in respect of that class of business

(2) Nothing in sub section (1) shall authorise any person permitted to carry on life insurance business of the nature referred to in that sub section, to insure the life of any person ordinarily resident outside India, during any period of his temporary residence in India

SYNOPSIS

1 *Scope* 2 *"Ordinary residence"*

1 Scope —The section is to be read as an exception to the preceding section 30 It permits any person who has obtained permission from the Central Government to carry on life insurance business in India in respect of the lives of persons ordinarily resident outside India, but sub-section (2) again prohibits him to insure the life of any person ordinarily resident outside India, during any period of his temporary residence in India Reading sub-sections (1) and (2) together it comes to this that a person permitted to carry on life insurance business on the lives of persons ordinarily resident outside India can insure such person's life but not during any period of his temporary residence in India, *i e*, the contract of insurance has to be effected outside India and not in India Where a person is so permitted to carry on life insurance business of the kind shaped above, he need not take out any certificate of registration from the Controller under section 3 of the Insurance Act, 1938, but the order of the Central Government granting him the permission would tantamount to a certificate of registration in that class of business as if issued by the Controller to him under the said section of the said Act With regard to the insertion of this section, the Select Committee observed that there should not be any objection to a company registered in India carrying on life insurance business in respect of persons residing outside India

2 "Ordinary residence"—The expression "connotes residence in a place with some degree of continuity and apart from accidental or temporary absences"[2], and means nothing more than usual residence or residence in the ordinary course of one's life[3] "Ordinary residence" is a thing which can be changed in a day A man is ordinarily resident in one place up till a particular day He then cuts the connection he has with that place in another case he might have disposed of his house and makes arrangement to have his home somewhere else Where there are indications that the place to which he moves is the place which he intends to make his home for,

1 *Vide* Statement of Objects and Reasons published in the *Gazette of India* Extraordinary Part II, section 2 No 2 dated the 17th February 1956.

2 *Lysaght v Inland Revenue Commissioners* (1928) A C 234

3 *Inland Revenue Commissioners v Lysaght* (1928) A C 234

at any rate, an indefinite period, as from that date he is ordinarily resident at that place"[1] *A* domiciled in Australia became a lunatic and detained in England while on a visit to that country, *A* is ordinarily resident in England[2] Similarly, *A* carries on business at Madras and nearly every year goes to England to see his wife and children there, *A* is ordinarily resident in Madras[3] Hence the expression "ordinarily resident", denotes a quality of continuity and permanence[4]

Power of Corporation to have official seal in certain cases

32. The Corporation may have for use in any zonal office, divisional office or in any office outside India, an official seal which shall be a *facsimile* of the common seal of the Corporation, with the addition on its face of the name of the zonal office, divisional office or other office where it is to be used, and any such official seal may be affixed to any deed or document to which the Corporation is a party

It has already been noticed in section 3(2) of the Act that the Corporation must have a common seal The Corporation having been made a legal person distinct from its members constituting it, its common seal has to be used in all contracts and documents made by it To have a comn on seal is incidental to a Corporation[5]

The common seal of the Corporation having to remain in the Central office, it would not be possible to have its use at all its zonal and divisional offices distributed throughout India and to be an impossibility to use it outside India To obviate this difficulty, this section lays down that a *facsimile* of the common seal with addition of the name of the zonal office, divisional office or other office can be kept at such offices and even in its office outside India This *facsimile* of the common seal can be used in those offices where it will be necessary to affix such seal in any deed or document to which the Corporation is a party[6]

Requirement of foreign laws to be complied with in certain cases

33. Where any property or rights appertaining to the controlled business of an insurer are transferred to and vested in the Corporation under this Act or would be so transferred and vested but for the fact that such transfer and vesting are governed otherwise than by the law of India, the insurer shall comply with such directions as may be given to him by the Corporation for the purpose of securing that the ownership of the property or, as the case may be, that the right is effectively transferred to the Corporation

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1 *Macroe* v *Macroe* (1949) 2 All E R 34 at p 36

2 *In re Mackenzie* (1941) Ch 69

3 *Turnbull* v *Inland Revenue Commissioners* 42 Sc L. R 15

4 *Lowry* v *Lowry* (1952) 2 All E R 61; *see* Article 5 (c) of the Constitution of India where the expression ordinarily resident has been used *see* also *Explanations* I and II to section 20 of the Code of Civil Procedure 1908 where it has been said that a person shall be deemed to reside at both places where he has a permanent dwelling at one place and also a temporary residence at another place for the purposes of that section.

5 *Sutton's Hospital's* case (1612) 10 Rep 306 quoted in Palmer's Company Law at p 232.

6 For similar provisions in the Companies Act 1956 *see* section 34 and to have official seal for use outside India *see* section 50

This section empowers the Corporation to direct an insurer whose controlled business stands transferred to and vests in the Corporation in accordance with the provisions of section 7 in respect of any property or rights of the said business to comply with the requirements of law by which such property or rights are governed with a view to effectively transfer same to the Corporation with regard to that law This section empowers the Corporation to direct the insurer to do what is required to be done under that law by which his properties or rights are governed so that the Corporation is vested with the absolute right thereto and thereby *not* to keep any loophole for any dispute of the nature arising under the private international law The provisions of this section apply to foreign insurers [1]

34 Notwithstanding anything contained in the Insurance Act, all shares which have vested in the Administrator General of any State under sub-section (8) of section 6A of that Act, and which have not been disposed of in accordance with the provisions of that sub section before the appointed day, shall, on payment of the amount of expenditure, if any, incurred by the Administrator-General in relation to such shares, by the persons who would have been entitled to those shares, if the said sub section had not been enacted, revest in such persons

Revesting of certain shares vested in the Administrator General

This section directs that the shares which vested in the Administrator General under sub-section (8) of section 6A of the Insurance Act, 1938, but were not disposed of by him shall re vest in the persons entitled to those shares on payment of the expenses incurred by the Administrator-General in respect to those shares

Para *A* held a large stock of shares in an insurance company which was in excess of the limit imposed by section 6 A of Insurance Act, 1938, and the excess over 10% vested in the Administrator-General under section 6A(8) after the prescribed date referred to in section 6A(7) The three years' period prescribed by section 6-A(7) expired on 1st June, 1953 but the Central Government extended the time upto 31st December, 1953 On 5th June, the Insurance Company applied to the Central Government under section 6C of the said Act to sanction a scheme for mutualisation which was March, 1954, and came into force on 30th June, 195 s of everyone of the share-holders of the said inst 's ..tood extinguished and all that the *quondum* o was to be paid out of a separate trust fund Su ry, 1956, new trustees were appointed for this s had to holders what- ionec e share- Act (Life y we lish This 1956, it w Co bec June, *A*, subject nd ex d in by him in red General wa o t tor- were extingu a es the *quondum* t d and that there right of the trust fund a

1 *See* section 46 of Notes thereto at

Repatriation of assets and liabilities in the case of foreign insurers in certain cases

35 (1) Any insurer incorporated outside India may, before the appointed day, make an application to the Central Government stating that among the assets appertaining to the controlled business of the insurer there are assets brought into India by the insurer, for the purpose of building up his life insurance business in India which, notwithstanding anything contained in section 7, should not be transferred to and vested in the Corporation

(2) On receipt of an application under sub section (1), the Central Government shall determine the value of the assets of the insurer appertaining to his controlled business in existence on the 31st day of December, 1955, computed as at that date in accordance with the provisions contained in paragraph 3 of Part B of the First Schedule, and deduct therefrom the total amount of the liabilities of the insurer appertaining to his controlled business in existence on the 31st day of December, 1956, computed as at that date in accordance with the provisions contained in the Second Schedule , and if there is any excess, the Central Government may, by order, direct that such assets equivalent in value to the excess as may be specified in the order shall not be transferred to or vested in the Corporation, or where the order is made after the appointed day, that the Corporation shall be divested of the said assets

(3) In the case of any insurer incorporated outside India, the Central Government may also, by order, direct that any such liabilities in respect of life insurance policies expressed in any foreign currency issued on the lives of persons who are not citizens of India as are specified in the order together with any such assets necessary to meet the liabilities, as may be so specified, shall not be transferred to or vested in the Corporation or, if the order is made after the appointed day, that the Corporation shall be divested of such liabilities and assets as aforesaid

(4) The amount of liabilities in respect of the policies referred to in an order made under sub section (3) shall be computed as at the 31st day of December, 1955,—

(*a*) in any case where in respect of the insurer concerned, an order has been made under sub section (2), in accordance with the provisions contained in clause (*b*) of the Second Schedule , and

(*b*) in any other case, in accordance with method A specified in the Second Schedule

Explanation —In computing the amount of liabilities in respect of the policies referred to in this sub section, allowance shall be made for receipts and payments in respect of such policies from the 31st day of December, 1955, up to the date of the order

(5) Every order made by the Central Government under this section shall be carried out by the Corporation in such manner as the Central Government may direct.

SYNOPSIS

1 *Applicability*
2 *Object*
3 *Scope*
4 *Determination of value of assets*
5 *Computations of the amount of liabilities of policies*
6 *Persons who are not citizens of India*

1 Applicability—The provisions of this section apply to foreign insurers who had brought assets into India appertaining to the controlled business for the purpose of building up their life insurance business in India

2 Object—The object of the section is to restore to a foreign insurer of his assets brought into India with a view to build up his life insurance business in India and of his liabilities under life insurance policies on the lives of persons who are not citizens of India and payable in foreign currency to the land of his origin

3 Scope—This section is to be read as an exception to section 7 This section empowers the Central Government to exempt a foreign insurer from the operation of section 7 in respect of his assets brought into India to build up his life insurance business and in respect of his liabilities in respect of life insurance policies on the lives of persons who are not citizens of India and expressed in any foreign currency from being transferred to and vested in the Corporation, when an application to that effect is made to it by such an insurer before 1st September, 1956 On receipt of such an application, it is the duty of the Central Government to determine the value of the assets and liabilities of insurer concerned in accordance with the provisions laid down respectively in sub-sections (2) and (3) of the section It also imposes a duty on the Corporation to carry out the directions of the Central Government in the manner specified in its order in that regard It further provides that even if the order of the Central Government is made after 1st September, 1956, the Corporation shall be divested of those assets and liabilities determined by the Central Government as above

4 Determination of value of assets—When an application is made to the Central Government by a foreign insurer before 1st September, 1956, for repatriation of his assets brought into India, appertaining to his controlled business the value of the said assets has to be determined as follows

The value of the assets appertaining to the controlled business in existence on 31st December, 1955, is to be computed as at that date in accordance with the provisions contained in paragraph 3 of Part B of the First Schedule The total amount of the liabilities appertaining to the said controlled business in existence on 31st December, 1955, is to be computed as at that date in accordance with the provisions contained in the Second Schedule The value of the liabilities determined as above has to be deducted therefrom the value of the assets computed as above and when there is an excess fund over liabilities, the assets equivalent in value the said excess will be the assets which the Central Government by its order specify that such assets must not be transferred to or vested in the Corporation and where the order is made after 1st September, 1956, the Corporation shall be

divested of the said assets Thus, where X stands for the value of the assets and Y stands for the amount of liabilities the assets will be $(X - Y)$ when the result is + value

5 **Computation of the amount of liabilities of policies** —The computation of the amount of liabilities of life insurance policies expressed in any foreign currency issued on the lives of persons who are not citizens of India shall be made as at the 31st day of December, 1955, in the following manner, namely,—

(i) where an order in respect of his assets has been made, according to the provisions contained in clause (*b*) of the Second Schedule, and

(ii) in any other case, according to the method *A* specified in the Second Schedule

In computing the amount in both cases, allowance should be made for receipts and payments in respect of such policies from the 31st day of December, 1955, up to the date of the order

6 **Persons who are not citizens of India** —Article 5 of the Constitution of India provides

"At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(*a*) who was born in the territory of India, or

(*b*) either of whose parents was born in the territory of India, or

(*c*) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement

shall be a citizen of India" Hence, persons who do not answer the descriptions as laid down in the said Article are not citizens of India But under Article 8 of the Constitution a person, (*a*) who or either of whose parents or grand parents was born in India as defined in the Government of India Act, 1935, as originally enacted, and (*b*) who is ordinarily residing in any country outside India as defined in the Government of India Act, 1935, as originally enacted, shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing upon his application made whether before or after the commencement of the Constitution Hence, such a person ordinarily residing in any country outside India will be a citizen of India and it cannot be said that he is a person who is not a citizen of India [1]

Contracts of chief agents and special agents to terminate

36 Notwithstanding anything contained in the Insurance Act or in any other law for the time being in force, every contract appertaining to controlled business subsisting immediately before the appointed day,—

(*a*) between an insurer and his chief agent or between an insurer and a special agent, or

1 *For the definition of India see* section 311 (1) of the Government of India Act, 1935; *see* also Note 5(*c*) under section 2 Insurance Act, *supra*

(*b*) between the chief agent of an Insurer and a special agent,

shall, as from the appointed day, cease to have effect and all rights accruing to the chief agent or the special agent under any such contract shall terminate on that day

Provided that in every such case compensation shall be given by the Corporation to the chief agent or the special agent, as the case may be, in accordance with the principles contained in the Third Schedule, and the provisions of sub section (2) of section 16 shall, so far as may be, apply in every such case.

SYNOPSIS

1 *Applicability*
2 *Object and scope*
3 *Compensation to chief agent*
4 *Compensation to special agent*
5 *Chief or special agent's right to refer the matter of compensation to tribunal*

1 Applicability—The provisions of this section apply to chief agents and special agents' contracts with the insurers whose controlled business has vested in the Corporation according to the provisions of section 7 of the Act

2 Object and scope—The object of the section is to transfer to, and vest in, the Corporation the controlled business of an insurer free from all existing contracts between the said insurer and his chief agent or special agent

This section comes within the meaning of the expression unless otherwise expressly provided by or under this Act" in section 9 (1) of the Act and hence by the provisions of this section, the contracts or agreements between the insurer and his chief agent or special agent do not have full force and effect against the Corporation as would have been otherwise by virtue of section 9, had not this section been enacted

This section provides that every contract between an insurer and his chief agent or special agent appertaining to his controlled business and subsisting immediately before 1st September, 1956, shall terminate from the said date but the Corporation will give compensation to such chief agent or special agent as provided in proviso to this section The section also provides like termination of contract between the chief agent of an insurer and a special agent, subject to the payment of compensation to him as provided in the said proviso[1]

3 Compensation to chief agent—The compensation payable to the chief agent for the termination of his contract shall, as laid down in the Third Schedule to the Act, consist of 75 per cent of the overriding commission specified in the contract of his chief agency with the insurer on the renewal premiums received by the Corporation during a period of ten years from 1st September, 1956 Such compensation has to be determined and paid annually for the said period[2]

1 *See* section 12 and notes thereto, *supra*.

2. *See* Third Schedule.

4 Compensation to special agent—The compensation payable to the special agent shall, as laid down in the Third Schedule, consist of 1/8th of his annual average earnings during the period from 1st January, 1952 to 31st December, 1956, in the form of overriding commissions in respect of business procured by him through insurance agents [1]

5 Chief or special agent's right to refer the matter of compensation to tribunal—As provided in sub section (2) of section 16, where the compensation is not acceptable to the chief or special agent, he may have the matter referred to the tribunal for decision The time prescribed for such reference is that it has to be made within three months from the date on which the compensation determined by the Corporation is offered to the chief agent or special agent, as the case may be [2]

Policies to be guaranteed by the Central Government

37 The sums assured by all policies issued by the Corporation including any bonuses declared in respect thereof and, subject to the provisions contained in section 14, the amounts assured by all policies issued by any insurer, the liabilities under which have vested in the Corporation under this Act, and all bonuses declared in respect thereof, whether before or after the appointed day, shall be guaranteed as to payment in cash by the Central Government

This section makes it obligatory on the Central Government to guarantee as to payment in cash *(a)* of the sums assured by all policies issued by the Corporation including any bonuses declared in respect thereof, and *(b)* of the amounts assured by all policies issued by any insurer, the liabilities under which have vested in the Corporation under section 7 but subject to the power of the Corporation to reduce the amounts of insurance as provided in section 14 [3]

Liquidation of Corporation

38 No provision of law relating to the winding up of Companies or Corporations shall apply to the Corporation established under this Act, and the Corporation shall not be placed in liquidation save by order of the Central Government and in such manner as that Government may direct

This section lays down in express terms that the provisions contained in the Companies Act, 1956, relating to the winding up, namely, those contained in Part VII of the said Act shall not apply to the Corporation in its winding up Likewise the provisions contained in sections 53 to 61 of the Insurance Act, 1938, for winding up of insurance companies shall not also apply to the Corporation It also lays down expressly that the Corporation must not be placed in liquidation except by the order of the Central Government The latter has been empowered to place the Corporation in liquidation in such manner as it may direct, that is to say, if any occasion arises for dissolving the Corporation, it is the Central Government that can direct such dissolution and also the manner in which such dissolution can be brought about

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1 *See* Third Schedule

2 Rule 12 (iii) of the Life Insurance Corporation Rules 1956

3 *See* Notes under section 14, *infra*

Special provisions for winding up of certain insurers.

39. Where any insurer being a company (other than a composite insurer) whose controlled business has been transferred to and vested in the Corporation under this Act, has, in accordance with the provisions of this Act, collected and distributed any moneys paid to him by the Corporation by way of compensation or otherwise and has also complied with any direction given to him by the Corporation for the purpose of securing that the ownership of any property or any right is effectively transferred to the Corporation, the Central Government may, on application being made to it in this behalf by such insurer, grant a certificate to the insurer that there is no reason for the continued existence of the insurer and where such a certificate has been granted, shall cause the certificate to be published in the official *Gazette* and upon the publication thereof, the insurer shall be dissolved

SYNOPSIS

1 *Applicability*
2 *Object and scope*
3 *Procedure for dissolution*

1 Applicability—The provisions of this section apply to an insurer, whether Indian or non Indian, but incorporated as a company under the Companies Act, and carrying on wholly life insurance business or life insurance business and general insurance business but the certificate of registration under the Insurance Act, 1938, in respect of the latter business stands wholly cancelled for a period of more than six months on the 19th day of January, 1956 Its provisions are not applicable to a composite insurer

2 Object and scope—The object of the section is to empower the Central Government to grant a certificate to an insurance company whose controlled business has been transferred to and vested in the Corporation and on such certificate being published in the official *Gazette* the said company shall stand dissolved, *i e*, its object is to put an insurance company into dissolution without its taking recourse to the procedure of winding up contained in sections 53 to 61 of the Insurance Act, 1938 or in the Companies Act, as contained in Part VII thereof The dissolution of such company has to be effected according to the procedure laid down in the section

3 Procedure for dissolution—The procedure for dissolution of an insurance company, other than a composite insurer, whose controlled business has been taken over by the Corporation under this Act is as follows

(*i*) it must apply to the Central Government to grant it a certificate to the effect that there is no reason for its continued existence any longer, but before it makes an application as above, it must satisfy itself that,—

(*a*) it has, in accordance with this Act, collected and distributed any moneys paid to it by the Corporation by way of compensation or otherwise, and

(*b*) it has complied with any direction given to it by the Corporation to secure the ownership of any property or any right being effectively transferred to the latter,

(ii) it must obtain the said certificate from the Central Government, and

(iii) the Central Government must cause the said certificate to be published in the official *Gazette*

On the said certificate being published in the official *Gazette*, the insurance company concerned shall be dissolved

Penalty for withholding property etc

40 If any person wilfully withholds or fails to deliver to the Corporation as required by section 13, any property or any books, documents or other papers which may be in his possession, or unlawfully retains possession of any property of an insurer which has been transferred to and vested in the Corporation under this Act or wilfully applies any such property to purposes other than those expressed in or authorised by this Act, he shall, on the complaint of the Corporation, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both

This section provides penalty for offences under the Act [1] Imprisonment of six months was in the original Bill but the Select Committee increased it to one year feeling that a lesser period provided in the Bill is insufficient to meet the ends of justice

Considering the sentences that can be imposed under this section is obvious that no Court other than the Court of a Presidency Magistrate or a Magistrate of the first class can take cognizance of complaint under this section Moreover, the said Court can take cognizance under this section only on a complaint of the Corporation [2]

Tribunal to have exclusive jurisdiction in certain matters

41 No Civil Court shall have jurisdiction to entertain or adjudicate upon any matter which a tribunal is empowered to decide or determine under this Act

This section bars the jurisdiction of Civil Courts to try any suit relating to any matter which a tribunal is empowered to decide or determine under this Act [3]

Enforcement of decisions of tribunals

42 Any decision of a tribunal may be enforced in any Civil Court within the local limits of whose jurisdiction the person against whom the decision is to be enforced actually and voluntarily resides or carries on business or personally works for gain or owns any property, as if it were a decree passed by that Court

This section gives the decision of a tribunal the force of a decree of the Civil Court and as such it is executable as a decree of a Civil Court like any other decree passed by a Civil Court under the provisions of the Code of

1 *See* section 13 and Notes thereto, *supra*

2 *See* section 32 and section 190 of the Code of Criminal Procedure (Act V of 1898) and *see* also section 109, Insurance Act, 1938

3 *See* sections 16 and

Civil Procedure (Act V of 1908) The determining factor of the Court's jurisdiction to execute the decision of the tribunal as a decree is not the jurisdiction of the tribunal which passed the decision but the person against whom the decision is to be enforced, *i e*, where the said person voluntarily resides or carries on business or personally works for gain or owns any property within the territorial limits of the Court irrespective of the territorial jurisdiction of the tribunal However, all the provisions of the said Code will apply while the said decision is put in execution by a Civil Court[1]

Application of the Insurance Act

43 (1) The following sections of the Insurance Act shall, so far as may be, apply to the Corporation as they apply to any other insurer, namely

Sections 2, 2B, 18, 26, 33, 38, 39, 41, 45, 46, 47A, 50, 51, 52, 110A, 110B, 110C, 119, 121, 122 and 123

(2) The Central Government shall, as soon as may be after the commencement of this Act, by notification in the official *Gazette*, direct that the following sections of the Insurance Act shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification, namely

Sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A

(2A) Section 42 of the Insurance Act shall have effect in relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation as if the reference to an officer authorised by the Controller in this behalf in sub section (1) thereof included a reference to an officer of the Corporation authorised by the Controller in this behalf

(3) The Central Government may, by notification in the official Gazette, direct that all or any of the provisions of the Insurance Act other than those specified in sub-section (1) or sub section (2), shall apply to the Corporation subject to such conditions and modifications as may be specified in the notification

(4) Every notification issued under sub-section (2 or sub-section (3) shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after it is issued, and shall be subject to such modifications as Parliament may make during the session in which it is so laid or the session immediately following

(5 Save as provided in this section, nothing contained in the Insurance Act shall apply to the Corporation

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1 For similar provisions *see* section 47A (2) of the Insurance Act, 1938

SYNOPSIS

1 *Object*
2 *Scope*
3 *Sections of Insurance Act made applicable to Corporation*
4 *Sections of Insurance Act made applicable to Corporation with conditions and modifications as may be specified by the Central Government*
5 *Applicability of section 42 of Insurance Act*
6 *Sections of the Insurance Act not applicable to Corporations*

1 Object —The object of this section is to resolve any conflict of law between the Insurance Act and this Act

2 Scope —This section expressly lays down, firstly, that the provisions of certain sections of the Insurance Act mentioned in sub section (1) of this section must apply to the Corporation just in the same way as they apply to any other insurer; secondly, that the provisions of certain other sections of the Insurance Act mentioned in sub-section (2) of this section must also apply to the Corporation but subject to such conditions and modifications as the Central Government may impose or make thereto, thirdly, that it directs the Central Government to make those modifications or impose conditions to those sections of the Insurance Act made applicable to the Corporation by sub-section (2) as soon after the commencement of this Act by notification in the official *Gazette*, fourthly, that it directs the application of section 42 of the Insurance Act to an agent of the Corporation procuring or soliciting life insurance business on its behalf in a modified way made in sub-section (2A), fifthly, that it confers discretionary powers on the Central Government to direct any other provisions of the Insurance Act to be applied to the Corporation with conditions and modifications thereto by notification in the official *Gazette*, sixthly, that it directs every notification issued under this section to be placed before both Houses of Parliament to be subjected to any modification, if made by Parliament, and lastly, that it expressly provides that the provisions of the Insurance Act shall not apply to the Corporation except as provided in this section

3 Sections of Insurance Act made applicable to Corporation — The following sections of the Insurance Act, 1938, have been made applicable to the Corporation

(i) Section 2, providing definition of certain terms and expressions,

(ii) Section 2B, providing appointment of Controller of Insurance,

(iii) Section 3, providing registration,

(iv) Section 18, providing furnishing of reports,

(v) Section 26, providing alterations in the particulars furnished with application for registration to be reported,

(vi) Section 33 providing power of the Central Government to cause investigation,

(vii) Section 38, providing assignment and transfer of insurance policies

(viii) Section 39, providing nomination by policy holders,

(ix) Section 41, providing prohibition of rebates

(x) Section 45, providing policy not to be called in question on ground of misstatement after two years ,

(xi) Section 46, providing application of the law in force in India, to policies issued in India ,

(xii) Section 47A, providing claims on small life insurance policies,

(xiii) Section 50, providing notice of options available to the assured on the lapsing of a policy ,

(xiv) Section 51, providing supply of copies of proposals and medical reports ,

(xv) Section 52, providing prohibition of business on dividing principle ,

(xvi) Section 110A, providing delegation of powers and duties of Controller ,

(xvii) Section 113B, proving signature of documents ,

(xviii) Section 110C, providing power of the Controller to call for information ,

(xix) Section 119, providing inspection and supply of copies of published prospectus, etc

(xx) Sections 121, 122 and 123 repealed by the Repealing and Amending Act, 1957 (XXXVI of 1957) [1]

4 Sections of Insurance Act made applicable to corporation with conditions and modifications as may be made by the Central Government —The following sections of the Insusance Act, 1938 have been made applicable to Corporation with conditions and modifications as may be made thereto by the Central Government

(i) Section 2D, providing insurers to be subject to the Insurance Act while liabilities remain unsatisfied[2] ,

(ii) Section 10, providing separation of accounts and funds[3] ,

(iii) Section 11, providing accounts and balance-sheet[4] ,

(iv) Section 13, providing actuarial report and abstract[5] ,

(v) Section 14, providing register of policies and register of claims[6],

(vi) Section 15, providing submission of returns[7] ,

(vii) Section 20, providing custody and inspection of documents and supply of copies[8] ,

(viii) Section 21, providing powers of Controller regarding return[9] ,

(ix) Section 22, providing power of Controller to order revaluation[10] ,

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1 *Vide* section 2 and Schedule I of that Act.
2. Modified—*Vide* G S R. 734 dated 23rd August, 1958 *see* Appendix.
3 *Ibid*
4 *Ibid*
5. *Ibid.*
6 Not modified
7 Modified *vide* G S R 734 *ibid*
8 Sub-section (3) omitted—*Vide ibid*
9 Not modified
10 Not modified

(x) Section 23, providing evidence of documents[1] ,

(xi) Section 25, providing returns to be published in statutory forms[2] ,

(xii) Section 27A, providing further provisions regarding investments[3] ,

(xiii) Section 28A, providing return of investments relating to controlled fund and changes therein[4] ,

(xvi) Section 35, providing amalgamation and transfer of insurance business[5] ,

(xv) Section 36, providing sanction of amalgamation and transfer by Controller[6] ,

(xvi) Section 37, providing statements required after amalgamation and transfer[7] ,

(xvii) Section 40, providing prohibition of payment by way of commission or otherwise for procuring business[8] ,

(xviii) Section 40A, providing limitation of expenditure on commission[9] ,

(xix) Section 40B, providing limitation of expenses of management in life insurance business[10] ,

(xx) Section 43, providing register of insurance agents[11] ,

(xxi) Section 44, providing prohibition of cessation of payments of commission[12] ,

(xxii) Section 102, providing penalty for default in complying with, act in contravention of, the Insurance Act[13] ;

(xxiii) Section 103, providing penalty for carrying on insurance business in contravention of sections 3, 7 and 98[14] ,

(xxiv) Section 104, providing penalty for false statement in document[15] ,

(xxv) Section 105, providing penalty for wrongfully obtaining or withholding property[16] ,

(xxvi) Section 106, providing power of Court to order restoration of property of insurer or compensation in certain cases[17] ,

(xxvii) Section 107, providing previous sanction of Advocate-General for institution of proceedings[18] ,

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1 Not modified
2. Not modified
3 Thoroughly modified *vide* G S R 734 dated 23rd August 1958 *see* Appendix
4 Thoroughly modified *ibid*
5 Not modified
6 Not modified
7 Not modified
8 Not modified
9 Not modified
10 Modified *See* G S R 734, *ibid*
11 Not modified
12. Modified *vide* G S R 734 *ibid*
13 Modified *ibid*
14 Modified *ibid*
15 Not modified
16 Modified *vide* G S R 734 *ibid* *see* also section 40 of this Act
17 Not modified
18 Not modified

(xxviii) Section 108, providing power of Court to grant relief[1],

(xxix) Section 109, providing cognizance of offences[2],

(xxx) Section 110, providing appeals[3],

(xxxi) Section 111, providing service of notices[4],

(xxxii) Section 113, providing acquisition of surrender values by policy[5],

(xxxiii) Section 114, providing power of Central Government to make rules[6], and

(xxxiv) Section 116A, providing power to exempt from certain requirements[7]

5 **Applicability of section 42 of the Insurance Act** —Sub-section (2A) has been inserted in this section by section 3 of Act XVII of 1957 By virtue of this sub-section the provisions of section 42 of the Insurance Act, 1938, have been made applicable in so far as they have relation to the issue to any individual of a licence to act as an agent for the purpose of soliciting or procuring life insurance business for the Corporation and in sub-section(1) of section 42 of the Insurance Act, 1938, the words "an officer authorised by him (Controller) in this behalf" should be read "as an officer of the Corporation authorised in this behalf by the Controller," that is to say, an officer of the Corporation authorised by the Controller shall have power to issue to any individual making an application in the prescribed manner a licence to act as an insurance agent for the purpose of soliciting or procuring a insurance business

6 **Sections of the Insurance Act not applicable to Corporation** — The following sections of the Insurance Act, 1938, shall not apply to the Corporation, namely,—

Sections 2C, 2E, 3A, 3B, 4, 5, 6, 6A, 6B, 6C, 7 8, 9, 12, 16, 17, 17A, 19, 24 (repealed), 27, 28, 29 to 32, 32A, 40C, 42A to 42C, 44A, 47, 48, 48A to 48C, 49, 52A to 52G, 53 to 61, 62 to 64, 64A to 64T, 65 to 101, 112, 115, 116, 117, 118 and 120

But the Central Government has been given the discretion to direct all or any of the said provisions to apply to the Corporation subject to such conditions and modifications by notification in the official *Gazette*

Act not to apply in certain cases

44 Nothing contained in this Act shall apply in relation to—

(*a*) any insurer whose business is being voluntarily wound up or is being wound up under the orders of the Court ,

(*b*) any insurer to whom the Insurance Act does not apply by reason of the provisions contained in section 2E thereof ,

1 Not modified
2. Not modified
3 Not modified
4. Not modified
5 Not modified
6 *See* section 48 of this Act not modified
7 Not modified

(*c*) any composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act,

(*d*) the scheme run by the Central Government known as the Post Office Life Insurance Fund,

(*e*) any approved superannuation fund as defined in clause (*o*) of section 58N of the Indian Income-tax Act, 1922 (Act XI of 1922) which is in existence on the appointed day,

(*f*) any scheme in existence on the appointed day or any scheme framed after the appointed day with the approval of the Central Government whereby, in consideration of certain compulsory deductions made by the Government from the salaries of its employees as part of the conditions of service, the payment is assured by Government on the death of the employee concerned or on the happening of any contingency dependent on his life.

This section excludes the cases mentioned in clauses (*a*) to (*f*) from the operation of this Act In other words, in those cases the assets and liabilities of the business even if they relate or appertain to the controlled business as defined in this Act shall not be transferred to and vested in the Corporation on the appointed day as provided by section 7 of this Act The cases mentioned in clauses (*a*) to (*f*) are as follows

(*i*) where the business of an insurer is being voluntarily wound up or is being wound up under the orders of the Court in accordance with the provisions of sections 53 and 54 of the Insurance Act, 1938,

(*ii*) where the insurer is any individual or unincorporated body of individuals or body corporate incorporated under the law of any country other than India, or with the object of obtaining insurance business, employs a representative or maintains a place of business, in India, and where he has ceased, before the commencement of the Insurance Act, to enter into any new contract of life insurance business,

(*iii*) where in respect of the management of the affairs of any composite insurer as defined in this Act, an Administrator has been appointed under section 52A of the Insurance Act[1],

(*iv*) where the scheme is run by the Central Government known as the Post Office Life Insurance Fund[2],

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1 *See* section 44 *post*

2 Regarding Savings Bank Insurance in Trg land *see* Government Annuities Act, 1929 19 & 20 Geo 5 c 29 *as amended* by the Industrial Assurance and Friendly Societies Act 1948, 11 & 12 Geo 6, c 39, whereby a savings bank insurance may be granted to a person not under the age of ten years if the amount does not exceed five pounds

(v) where any approved superannuation fund is in existence on the appointed day, t#, 1st September, 1956[1],

(vi) any scheme, whether in existence on the appointed day, t#, 1st September, 1956, or framed after the said date with the approval of the Central Government, whereby in considera tion of certain compulsory deductions made by Government from the salaries of its employees as part of the conditions of service, the payment of money is assured by Government on the death of the employee or on the happening of any contin gency dependent on his life

Special provision regarding transfer of controlled busi ness of certain composite insurers.

45 Notwithstanding anything contained in clause (c) of section 44, the Central Government may, by notification in the official *Gazette*, direct that on and with effect from such date as may be specified in the notification, the assets and liabilities appertaining to the controlled business of a composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act, shall be transferred to and vested in the Corporation, and on the issue of such a notification, the provisions of this Act shall, so far as may be, apply in relation to such insurer and to the transfer and vesting of the assets and liabilities of his controlled business in the Corporation as they apply in relation to all other insurers and to the transfer and vesting of the assets and liabilities of their controlled business in the Corporation, subject to the modification that references in this Act to the appointed day shall be construed as references to the day specified in the notification

This section is to be read as an exception to clause (c) of section 44 Normally, the provisions of this Act do not apply to any composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act[2]

But this section confers discretionary powers on the Central Govern ment to direct that the assets and liabilities appertaining to the controlled business of a composite insurer in respect of the management of whose affairs an Administrator has been appointed under section 52A of the Insurance Act, shall be transferred to and vested in the Corporation Such directions of transferring to and vesting in the Corporation of the assets and liabilities of the said type of composite insurer, so far as it relates to his controlled business, must be made by the Central Government by notification in the official *Gazette* When such a notification is made, the transfer and vesting of the assets and liabilities of the said insurer concerned regarding his controlled business is to take effect from the date of notification and all the provisions of this Act will apply thereto as they apply to other insurers under this Act In other words, the provisions of this Act will govern the said insurer's controll ed business on and from the date of the notification in the official *Gazette* and not from the appointed day, t#, 1st September, 1956

1 *See* section 2 (3) (iv) *supra* and for definition of approved superannuated fund *see* Notes under section 118 of the Insurance Act, 1938

2. *See* Notes under section 52A of the Insuranc Act regarding when an Administrator can be appointed under that section.

Defects in constitution of Corporation or Committees not to invalidate acts or proceedings.

46. No act or proceeding of the Corporation or of any committee of the Corporation shall be called in question on the ground merely of the existence of any vacancy or defect in the constitution of the Corporation or Committee, as the case may be

This section saves the acts and proceedings of the Corporation or any of its Committee being called in question because of (i) the existence of any vacancy not having been filled up or (ii) the existence of defect in the constitution either of the Corporation itself or its Committee

Protection of action taken under Act

47. No suit, prosecution or other legal proceeding shall lie against any member or employee of the Corporation for anything which is in good faith done or intended to be done under this Act

This section protects every member or employee of the Corporation from being sued, prosecuted or proceeded against in any legal proceeding for anything which he has in good faith done or intended to be done under this Act

Power to make rules

48. (1) The Central Government may, by notification in the official *Gazette*, make rules to carry out the purposes of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,—

(*a*) the term of office and the conditions of service of members ,

(*b*) the manner in which the moneys and other assets belonging to any such fund as is referred to in section 8 shall be apportioned between the trustees of the fund and the Corporation ,

(*c*) the services which the chief agent should have rendered for the purpose of the proviso to section 12 ,

(*d*) the jurisdiction of the tribunals constituted under section 17 ,

(*e*) the manner in which and the persons to whom, any compensation under this Act may be paid ,

(*f*) the time within which any matter which may be referred to a tribunal for decision under this Act may be so referred ,

(*g*) the manner in which and the conditions which investments may be made by the

(*h*) the manner in which an Employees and Agents Relations Committee may be constituted for each zonal-office ,

(*i*) the form in which the report giving an account of the activities of the Corporation shall be prepared ,

(*j*) the conditions subject to which the Corporation may appoint employees ,

(*k*) the fees payable under this Act and the manner in which they are to be collected ,

(*l*) any other matter which has to be or may be prescribed

(3) All rules made under this section shall be laid for not less than thirty days before both Houses of Parliament as soon as possible after they are made, and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following

This section confers discretionary powers on the Central Government to make rules with a view to carry out the purposes of this Act These rules are to be made by notification in the official *Gazette* Apart from the general powers to make rules special powers have also been conferred on the Central Government to make rules covering matters mentioned in clauses (*a*) to (*l*) of sub-section (2) These special powers cover matters, such as, (*i*) term of office and conditions of membership under section 4 , (*ii*) apportionment of assets under section 8 , (*iii*) the services which a chief agent should have rendered for the purposes of proviso to section 12 , (*iv*) jurisdiction of the tribunals constituted under section 17 , (*v*) about compensation payable to whom and in what manner , (*vi*) time-limit for referring a matter to the tribunal , (*vii*) investments to be made by the Corporation , (*viii*) constitution of the Employees and Agents Relations Committee , (*ix*) form of annual report , (*x*) conditions of appointment of employees , (*xi*) fees to be charged and their collection , and (*xii*) any other matter to be prescribed under this Act

These rules as soon as they are made have to be laid before both Houses of Parliament for not less than 30 days and they shall be subject to such modifications as Parliament may make [1]

Where the Central Government promulgated an order on 30th December, 1957, known as the "Categorisation Order" known popularly as the "Blue Order" in exercise of its powers conferred by sub-section (2) of section 11 of the Act and the classification made therein being eminently rational and warranted by law, the said order is not *ultra vires* on the ground of discrimination [2] But the order of the Central Government No 53(1)-Ins, dated 1st June, 1957, made under section 11(2) altering the remuneration and other terms and conditions of service of the employees applies only to those who were in supervisory, clerical or subordinate staff grades of insurers on 31st August, 1956 and not to officers and field workers of the insurers [3]

1 For interpretation of rules, *see* Note 3 (A) under section 114 of the Insurance Act 1938

2. *Sunil Kumar* v *Zonal Manager E Z , L I* Corporation 1962 Cal 75

3 *P C Gojia* v *Life Insurance Corporation*, 1958 Pat 223

Power to make regulations

49. (1) The Corporation may, with the previous approval of the Central Government, by notification in the *Gazette of India*, make regulations not inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the powers and functions of the Corporation which may be delegated to the zonal managers ,

(*b*) the method of recruitment of employees and agents of the Corporation and the terms and conditions of service of such employees or agents ,

(*bb*) the terms and conditions of service of persons who have become employees of the Corporation under sub-section (1) of section 11 ,

(*c*) the number, term of office and conditions of service of members of Boards constituted under section 22 ,

(*d*) the territorial limits of each zone established under this Act and the business to be transacted in each zone ,

(*e*) the manner in which the fund of the Corporation shall be maintained ,

(*f*) the maintenance of separate funds and accounts at each of the zonal office ,

(*g*) the jurisdiction of each divisional office and the establishment of councils representative of policy-holders in each area served by a divisional office for the purpose of advising the divisional office in respect of any matter which may be referred to it ,

(*h*) the conduct of business at meetings of the Corporation ,

(*i*) the formation of committees of the Corporation and the delegation of powers and functions of the Corporation to such committees, and the conduct of business at meetings of such committees ,

(*j*) the form and manner in which policies may be issued and contracts binding on the Corporation may be executed ,

(*k*) the classification of policies, whether issued by the Corporation or by any insurer whose controlled business has been transferred to and vested in the Corporation,

for the purpose of declaring differential bonuses, wherever necessary ,

(*l*) the manner in which and the intervals within which the accounts of the various zonal offices, divisional offices and branch offices may be inspected and their accounts audited ,

(*m*) the conditions subject to which any payment may be made by the Corporation

Clause (*bb*) in sub-section (2) was inserted by Act XVII of 1957 with retrospective effect The object of the section is to confer discretionary powers on the Corporation to make its regulations for the purpose of giving effect to the provisions of this Act For the validity of these regulations, the following conditions laid down in this section have to be satisfied, namely,—

(*i*) they must be made for the purpose of giving effect to the provisions of this Act ,

(*ii*) they must not be inconsistent with any of the provisions of this Act ,

(*iii*) they must have been made with the previous approval of the Central Government ,

(*iv*) they must have been made to provide for matters for which provision is expedient , and

(*v*) they must have been notified in the *Gazette of India*

The main power to make regulations is derived under sub-section (1) In stating the various matters upon which regulations may be made sub-section (2) is illustrative only In order to find out whether the Corporation is competent to make regulations on a particular subject or matter, the test is not to discover the particular matter in the various items contained in sub-section (2) but to look to the Act itself And if the Act has contemplated provision by regulation of such a matter, it will be open to the Corporation in exercise of the power given to it by sub-section (1) to make regulations for giving effect to it [1]

Clause (*b*) of sub-section (2) of this section does not confer any power on the Corporation to alter the terms and conditions of service of the existing employees of insurers nor does Regulation 7 of the Life Insurance Corporation (Staff) Regulations, 1956, purport to confer any such power on the Corporation [2] An employee dismissed in violation of the said (Staff) Regulations, 1956, can apply for appropriate writs under Article 226 of the Constitution of India [3]

"Whenever a Corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, not only the objects which the Corporation

1 *Kedar Nath v Life Insurance Corporation of India* 1961 All 606 in the instant case it has been held that Life Insurance Corporation of India (Staff) Regulations are not *ultra vires* the powers conferred under clause (*bb*) of this section

2. *P C Gojia v Life Insurance Corporation* 1958 Pat 223
P C Menon v Divisional Manager Life Corporation of India 1960 Mad

itself may legitimately pursue must be ascertained from the Act itself, but the powers which the Corporation may legitimately use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions".[1] There is a "well recognised principle that, where there is a competent authority to which an Act of Parliament entrusts the power of making regulations, it is for that authority to decide what regulations are necessary; and any regulations which they may decide to make should be supported, unless they are manifestly unreasonable or unfair,"[2] when it is the duty of the Court to declare it to be invalid.[3]

THE FIRST SCHEDULE

(*See* section 16)

PRINCIPLES FOR DETERMINING COMPENSATION

PART A

The compensation to be given by the Corporation to an insurer having a share capital on which dividend or bonus is payable, who has allocated as bonus to policy holders the whole or any part of the surplus as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act in respect of the last actuarial investigation relating to his controlled business as at a date earlier than the 1st day of January, 1955, shall be computed in accordance with the provisions contained in paragraph 1 or paragraph 2, whichever is more advantageous to the insurer

Paragraph 1.—Twenty times the annual average of the share of the surplus allocated to shareholders as disclosed in the abstracts aforesaid in respect of the relevant actuarial investigations multiplied by a figure which represents the proportion that the average business in force during the calendar years comprised in the period between the date as at which the actuarial investigation immediately preceding the earliest of the relevant actuarial investigations was made and the date as at which the last of such investigations was made

Paragraph 2.—Half the amount payable under paragraph 1 *plus* the paid up capital or assets equivalent thereto, or, in the case of a composite insurer, that part of the paid up capital or assets equivalent thereto which has or have been transferred to and vested in the Corporation under this Act less the amount, if any, of expenses or losses or both capitalised by the insurer for the purposes of Form A of the First Schedule to the Insurance Act

Explanation 1.—For the purposes of paragraph 1,—

(*a*) "relevant actuarial investigations" means such minimum number of latest actuarial investigations as at dates earlier than the 1st day of January, 1955 (not being less than two in any case), as would leave the period intervening between the

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1 Maxwell Interpretation of Statutes, p 360
2 *London County Council* v *Berrordsey Bioscope Co* (1911) 80 L. J. K. B 144
3 *Shiles* v *Galinski* (1904) 1 K. B 621

date as at which the actuarial investigations immediately
preceding the first of such investigations was made and the
date as at which the last of such investigations was made, to
be not less than four years ;

"average business in force" means the average of total sums
assured by the insurer (including any bonus) in respect of his
effected business as on the 31st day of December of each of
the relevant calendar years

[illegible] for the purposes of paragraph 1, where an insurer has
[illegible] more than 5 per cent of any such surplus as is
[illegible] insurer shall be deemed to have allocated only
[illegible] and where an insurer has not allocated any
[illegible] or has allocated to shareholders less than 3½

Provided further that—

(*a*) in any case where the order made under section 35 is with reference to sub section (2) only, the preceding proviso shall have effect as if clause (*b*) had been omitted therefrom , and

(*b*) in any case where the order made under section 35 is with reference to sub-section (3) only, the preceding proviso shall have effect as if—

(*i*) clause (*a*) had been omitted ,

(*ii*) in clause (*b*), the words, brackets and letter "with respect to the balance arrived at under clause (*a*)" had been omitted , for the words "the said balance", the words "annual average of the surplus" had been substituted , and for the words, brackets and letter "with the provisions contained in clause (*b*) of", the words and letter "with method A specified in" had been substituted

Explanation 4 —Where an insurer is an insurer incorporated outside India whose paid up capital is outside India—

(*a*) the provisions contained in paragraph 1 shall have effect as if the words "less a sum equal to that part of the paid-up capital of the insurer as may be determined by the Central Government to be allocable to the controlled business of the insurer" were inserted at the end of that paragraph , and

(*b*) the provisions contained in paragraph 2 shall have effect as if,—

(*i*) the words "without making the deduction referred to in clause (*a*) of *Explanation* 4" had been inserted after the words "half the amount payable under paragraph 1" , and

(*ii*) the words beginning with 'plus the paid up capital" and ending with "in the First Schedule to the Insurance Act" had been omitted

PART B

The compensation to be given by the Corporation to an insurer having a share capital on which dividend or bonus is payable who has not made any such allocation as is referred to in Part A in respect of the last actuarial investigation as at a date earlier than the 1st day of January, 1955, shall be an amount equal to the value of the assets of the insurer appertaining to his controlled business in existence, on the 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 3 less the amount of liabilities of the insurer appertaining to such business in existence on the 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 4

Paragraph 3 —(*a*) The market value of any land or buildings

Assets

(*b*) The market value of any shares, securities or other investments held by the insurer

date as at which the actuarial investigations immediately preceding the first of such investigations was made and the date as at which the last of such investigations was made, to be not less than four years ,

(*b*) "average business in force" means the average of total sums assured by the insurer (including any bonus) in respect of his controlled business as on the 31st day of December of each of the relevant calendar years

Explanation 2 —For the purposes of paragraph 1, where an insurer has allocated to shareholders more than 5 per cent of any such surplus as is referred to therein, the insurer shall be deemed to have allocated only 5 per cent of the surplus and where an insurer has not allocated any such surplus to shareholders or has allocated to shareholders less than 3½ per cent of the surplus

Explanation 3 —In the case of any insurer incorporated outside India, the annual average of the share of the surplus allocated to shareholders for the purposes of paragraph 1 shall be deemed to be the annual average of the surplus as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act, in respect of the relevant actuarial investigations multiplied by a figure which is the average of the two figures mentioned below

(*i*) a figure representing the proportion which the share allocated to shareholders out of the surplus in respect of the world business of the insurer (such share being computed subject to the provisions of *Explanation* 2) bears to the whole of such surplus as ascertained with reference to the last actuarial investigation relating to such business as at a date earlier than the 1st day of January, 1955 , and

(*ii*) a figure representing the proportion which the share allocated to shareholders out of the surplus in respect of the world business of the insurer (such share being computed subject to the provisions of *Explanation* 2) bears to the whole of such surplus as ascertained with reference to the actuarial investigation relating to such business immediately preceding the actuarial investigation referred to in clause (*i*)

Provided that in the case of any such insurer in respect of whom an order has been made under section 35, the amount computed as follows shall be deemed to be the annual average of the surplus

(*a*) there shall be deducted from the annual average of the surplus, interest at 3½ per cent per annum for one year calculated on the assets specified in any order made under sub-section (2) of section 35 ,

(*b*) with respect to the balance arrived at under clause (*a*), there shall be computed an amount that bears the same proportion to the said balance as the liability on policies appertaining to the controlled business of the insurer, other than those expressed in any foreign currency issued on the lives of persons who are not citizens of India, bears to the liability in respect of all policies appertaining to such business, the liabilities on policies being computed as at the 31st day of December, 1955, in accordance with the provisions contained in clause (*b*) of the Second Schedule

Provided further that—

(*a*) in any case where the order made under section 35 is with reference to sub section (2) only, the preceding proviso shall have effect as if clause (*b*) had been omitted therefrom , and

(*b*) in any case where the order made under section 35 is with reference to sub-section (3) only, the preceding proviso shall have effect as if—

(i) clause (*a*) had been omitted ,

(ii) in clause (*b*), the words, brackets and letter "with respect to the balance arrived at under clause (*a*)" had been omitted , for the words "the said balance", the words "annual average of the surplus" had been substituted , and for the words, brackets and letter "with the provisions contained in clause (*b*) of", the words and letter "with method A specified in" had been substituted

Explanation 4 —Where an insurer is an insurer incorporated outside India whose paid-up capital is outside India—

(*a*) the provisions contained in paragraph 1 shall have effect as if the words "less a sum equal to that part of the paid-up capital of the insurer as may be determined by the Central Government to be allocable to the controlled business of the insurer" were inserted at the end of that paragraph , and

(*b*) the provisions contained in paragraph 2 shall have effect as if,—

(i) the words "without making the deduction referred to in clause (*a*) of *Explanation* 4" had been inserted after the words "half the amount payable under paragraph 1" , and

(ii) the words beginning with 'plus the paid up capital" and ending with "in the First Schedule to the Insurance Act" had been omitted

PART B

The compensation to be given by the Corporation to an insurer having a share capital on which dividend or bonus is payable who has not made any such allocation as is referred to in Part A in respect of the last actuarial investigation as at a date earlier than the 1st day of January, 1955, shall be an amount equal to the value of the assets of the insurer appertaining to his controlled business in existence, on the 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 3 less the amount of liabilities of the insurer appertaining to such business in existence on the 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 4

Paragraph 3 —(*a*) The market value of any land or buildings

Assets

(*b*) The market value of any shares, securities or other investments held by the insurer

(c) The total amount of the premiums paid by the insurer in respect of all leasehold properties reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease

(d) The amount of debts due to the insurer, whether secured or unsecured, to the extent to which they are reasonably considered to be recoverable

(e) The amount of premiums which have fallen due to the insurer on policies of life insurance but have not been paid and the days of grace for payment of which have not expired

(f) The amount of cash held by the insurer, whether in deposit with a bank or otherwise

(g) The value of all tangible assets other than those falling within any of the preceding clauses

Paragraph 4.—(a) The total amount of liabilities of the insurer to holders of policies in respect of his controlled business on account of matured claims on which payment has to be made

Liabilities

(b) The total amount of liabilities of the insurer to holders of policies in respect of his controlled business which have not matured for payment, the liabilities in respect thereof being calculated on the following actuarial bases

(i) in respect of whole-life assurances and endowment assurances, the mortality table to be used shall be the Oriental (25—35) ultimate mortality table, and an interest rate of 3½ per cent per annum shall be assumed and for expenses 20 per cent of office premiums in the case of with profit policies shall be reserved;

(ii) in respect of other policies such actuarial bases determined by the actuary making the valuation as may be consistent with the basis specified in clause (i), and

(iii) in determining the liabilities of insurers under clause (b), the actuary shall make all the usual provisions and reserves as are ordinarily done in such cases

(c) The total amount of all other liabilities of the insurer

(d) Where, as a result of the actuarial valuation of policy liabilities made under clause (b), the life insurance fund is shown to be in surplus, a sum equal to 96 per cent of such surplus shall be deemed to be a liability under this paragraph

Explanation.—For the purposes of this Part, in the case of an insurer incorporated outside India in respect of whom an order under section 5 has been made, the assets or the assets and liabilities, as the case may be, specified in the order shall be excluded

Paragraph 5.—If the insurer to whom compensation is to be given under this Part is a displaced insurer, the compensation to be given shall be computed in accordance with the following provisions:—

Firstly, there shall be ascertained the losses incurred by the displaced insurer in respect of claims arising by deaths established by the displaced insurer to have been caused by the civil disturbances which took place on the occasion of the setting up of the Dominions of India and Pakistan, the total loss being taken as the difference between the amounts paid as claims in respect of such deaths and the total amount of the actuarial reserve in respect of the relevant policies ,

Secondly, there shall be ascertained the difference between the market value as at the 15th day of August, 1947, of any immovable property in West Pakistan belonging to the displaced insurer and the market value thereof determined under paragraph 3 of this Part, or, where any such immovable property has been sold before the 19th day of January, 1956, the difference between the market value thereof as at the 15th day of August, 1947, and the sale price ,

Thirdly, there shall be ascertained the amount of deposits held by the displaced insurer in banks which could not be withdrawn on account of a moratorium declared under any law for the time being in force, to the extent to which such deposits have become losses ,

Fourthly, there shall be ascertained the difference between the market value as at the 15th day of August, 1947, of any shares, in any company now carrying on business in West Pakistan held by the displaced insurer and which had been acquired before the 15th day of August, 1947, and the market value of such shares as at the 19th day of January, 1956

The amount of compensation to be given to the displaced insurer under this Part shall be—

(*a*) the amount which would have to be given to him if this paragraph had not been enacted, *plus*

(*b*) an amount which represents one half of the difference between the compensation which would have to be given to him if to the value of the assets referred to in paragraph 3 there had been added the sum of the four items referred to in this paragraph and with respect to the liabilities referred to in paragraph 4, the life insurance fund had been increased by a like sum, and the compensation which would have been given to him if this paragraph had not been enacted

Or

One half of the paid-up capital of the displaced insurer whichever is less

Explanation —For the purposes of this paragraph "displaced insurer" means an insurance company whose registered office during any part of the year 1947 was in any area now forming part of West Pakistan and whose registered office is now in India

PART C

The compensation to be given by the Corporation to an insurer—

(*a*) having no share capital , or

(*b*) having a share capital on which a dividend or bonus is not payible, shall be in the form of an addition at the rate of rupee one per thousand in respect of the sum assured (excluding bonuses) under each with profit policy, and in the case of an insurer falling under clause (*b*), such compensation shall also include a sum equivalent to the paid up capital of the insurer to be paid to him.

THE SECOND SCHEDULE

(*See* section 35)

PRINCIPLES FOR DETERMINING THE VALUE OF LIABILITIES IN CERTAIN CASES

The total amount of the liabilities of an insurer incorporated outside India for the purposes of sub-section (2) of section 35 shall be the sum of the amounts computed in accordance with the following provisions

(*a*) the total amount of liabilities of the insurer to holders of policies in respect of his controlled business on account of matured claims on which payment has to be made,

(*b*) the total amount of liabilities of the insurer to holders of policies in respect of his controlled business which have not matured for payment, the liabilities in respect thereof being the liabilities calculated in accordance with method B below or the mean of the liabilities calculated in accordance with method A and method B below, whichever is greater

Method A—Actuarial liability calculated on the same bases as adopted by the insurer at the last actuarial investigation as at a date earlier than the 1st day of January, 1955

Method B—Actuarial liability calculated on the method known as the modified net premium method of valuation, the mortality table to be used being the Oriental (25—35) ultimate mortality table, an interest rate of 2½ per cent per annum being assumed and the allowance for first year expenses being Rs 40 per thousand rupees of the sum assured by the policy

Explanation 1—Before ascertaining the liability under method A and method B, there shall be added to each with profit policy in force on the 1st day of December, 1955 (unless such addition has already been made) bonus at the same rate as declared at the said last actuarial investigation in respect of each year or part of a year the policy had been in force since the date as at which the said last actuarial investigation was made

Explanation 2—In calculating the liabilities in accordance with method A or method B,—

(i) in respect of policies other than whole life and endowment assurance, such actuarial basis determined by the actuary making the valuation as may be consistent with the basis specified in the method shall be employed, and

(ii) the actuary shall make all the usual provisions and reserves as are ordinarily done in such cases,

(*c*) the total amount of all other liabilities of the insurer

THE THIRD SCHEDULE

(*See* section 36)

PRINCIPLES FOR DETERMINING COMPENSATION PAYABLE TO CHIEF AGENTS

The compensation payable to a chief agent shall consist of seventy-five per cent of the overriding commission specified in the contract relating to chief agency with the insurer on the renewal premiums received by the Corporation during a period of ten years from the appointed day in respect of the business procured by the chief agent before the appointed day, and such compensation shall be determined and paid annually for the said period

PRINCIPLES FOR DETERMINING COMPENSATION PAYABLE TO SPECIAL AGENTS

The compensation payable to a special agent shall consist of one-eighth of his annual average earnings during the period beginning on the 1st day of January, 1952, and ending on the 31st day of December, 1955, in the form of overriding commissions in respect of business procured by him through insurance agents

PART IV-B

THE LIFE INSURANCE CORPORATION RULES, 1956

S R O 1889A —In exercise of the powers conferred by section 48 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby makes the following rules, namely,—

1 Short title —These Rules may be called the Life Insurance Corporation Rules, 1956

[1][2] **Definitions** —In these rules—

(i) "Act" means the Life Insurance Corporation Act, 1956 (31 of 1956),

(ii) "Section" means a section of the Act,

(iii) "Tribunal" means the Tribunal constituted by the notification of the Government of India in the Ministry of Finance S R O No 1734, dated the 25th May, 1957,]

3 Terms of office of members —(1) An official member shall hold office during the pleasure of the Central Government

(2) A non-official member shall hold office for a period of two years unless a shorter period is specified in the order of appointment

(3) An outgoing member shall be eligible for re-appointment

Comment This rule in sub rules (1) and (2) delimits the term of office of the official and non official members of the Life Insurance Corporation Sub rule (3) provides that outgoing member shall be eligible for re-appointment

4 Resignation of members —The Chairman or any member may by writing under his hand addressed to the Central Government, resign his office, and such resignation shall take effect from the date on which it is accepted by the Central Government [2][or on the expiry of thirty days from the date of resignation, whichever is earlier]

5 Absence from meetings —Any member who absents himself from three consecutive meetings of the Corporation without leave of the Corporation shall cease to be a member thereof

6 Removal of a member —(1) The Central Government may remove any member, who in the opinion of that Government, has so flagrantly abused in any manner his position as a member as to render his continuance as a member detrimental to the public interest

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1 Subs by Notification No G S R 317 dated 30th April 1958 published in the *Gazette of India* dated 30th May 1958 Part II Section 3 (i)

2 Ins by G S R 317 dated 30th April 1958

(2) No member shall be removed under sub-rule (1) unless he has been given a reasonable opportunity of showing cause against his removal

Comment This rule provides that the Central Government may order the removal of a member after giving him a reasonable opportunity of showing cause

7 **Casual vacancies among members** —In the event of the occurrence of any vacancy in the office of a member by reason of his death, resignation or removal, or otherwise, the Central Government may appoint another person to act in his place

8 **Fees of members** —A member not being a wholetime officer of the Corporation or an officer of the Central Government shall be paid fees by the Corporation as follows

(*a*) for attending meetings of the Corporation—Rs 100 for each meeting ,

(*b*) for attending meetings of the Executive Committee or Investment Committee of the Corporation—Rs 50 for each meeting ,

(*c*) for attending meetings of any other committee set up by the Corporation—Rs 20 for each meeting

9 **Travelling and daily allowance** —(1) Every non-official member shall be entitled to—

(*a*) travelling allowances for journeys performed by him in connection with the work of the Corporation at the rates admissible to officers of the first grade in service of the Central Government

Provided that every such member shall, when travelling by rail, be entitled to travel by air-conditioned accommodation, if such accommodation is available ,

(*b*) daily allowances for halts on duty at the maximum rate admissible to an officer of the first grade in the service of the Central Government

(2) The travelling and daily allowances of an official member shall be governed by the rules applicable to him for journeys performed on official duty , and in case such official member is not in the service of the Corporation, the Corporation shall make necessary reimbursement to the authority employing such official

10 **Apportionment of provident fund, etc** —(1) Where all the employees of an insurer whose controlled business is transferred to and vested in the Corporation under section 7 do not become employees of the Corporation under section 11, all the moneys and other assets belonging to the provident fund or superannuation fund or any other like fund referred to in sub-section (1) of section 8 shall be apportioned between the trustees of the fund and the Corporation in the following manner, namely,—

(*a*) the moneys and other assets of any provident fund shall be apportioned in the proportion which the total of the amounts lying to the credit of the persons becoming employees of the Corporation bears to the total of the amounts lying to the credit of the persons who do not become employees of the Corporation ,

(*ii*) the moneys and other assets of any superannuation fund shall be apportioned in the proportion which the liability of the fund in respect of the persons becoming employees of the Corporation bears to a similar liability in respect of the persons who do not become employees of the Corporation, such liability to be ascertained on such basis as may be determined by the Corporation and approved by the Central Government, and

(*iii*) the moneys and other assets of any other like fund shall be apportioned in accordance with the principles set out in clause (*i*) or clause (*ii*), as the case may be

(2) The provisions of sub-sule (1) shall, so far as may be, apply in relation to the valuation and apportionment of moneys and other assets belonging to any provident fund or superannuation fund or any other like fund referred to in clause (*f*) of sub-section (*2*) of section 10, as they apply in relation to the apportionment and valuation of moneys and other assets belonging to a provident fund, superannuation fund or any other like fund referred to in sub-section (1) of section 8

Explanation —For the purposes of this rule the assets of a provident fund, superannuation fund or any other like fund shall be valued at the market rate as on the appointed day

11 Transfer of service of existing employees of chief agents —The provisions of section 12 shall apply only in respect of the employees of a chief agent of an insurer who was, under the terms of his contract with the insurer, required to render the following services to the policy holders, namely,—

(*a*) collection of premiums from the policy-holders in respect of policies secured through his insurance agents in the area for which he was appointed chief agent, and

(*b*) issuing of final (*pucka*) receipts for the premiums so collected

12 Reference to Tribunal —The time within which a reference may be made to the Tribunal in respect of the determination of compensation payable under the Act, shall be as follows, namely,—

(*i*) in the case of an insurer to whom compensation is payable under Part A or Part C of the First Schedule to the Act, within three months from the date on which the compensation determined by the Corporation is offered to the insurer,

(*ii*) in the case of an insurer to whom compensation is payable under Part B of the First Schedule to the Act, within six months from the date on which the compensation determined by the Corporation is offered to the insurer,

(*iii*) in the case of compensation payable to a chief agent or special agent under the proviso to section 36 of the Act, within three months from the date on which the compensation determined by the Corporation is offered to the chief agent or special agent, as the case may be

Provided that any such reference may be admitted by the Tribunal after the period of limitation prescribed therefor under this rule, if the person making the reference satisfies the Tribunal that he had sufficient cause for not making the reference within the said period

Comment: This rule provides for limitation for reference to the Tribunal in respect of compensation payable under the Act

[1][12A **Jurisdiction of Tribunal** —The Tribunal may exercise jurisdiction in the whole of India and shall have power to decide or determine all or any of the following matters, namely,—

(*i*) any question whether of title or of liability or of any nature whatsoever in relation to the assets and liabilities pertaining to the controlled business of the insurer transferred to and vested in the Corporation ,

(*ii*) any question under section 10 or under any rules made there under whether any property is or was held or used by a composite insurer for the purpose of his controlled business ,

(*iii*) every application made under section 15 and all claims outstanding in respect of any transaction which may be the subject matter of any such application determined in favour of the Corporation ,

(*iv*) all claims for compensation payable under the Act to insurer whose controlled business has been transferred to and vested in the Corporation , and all matters connected with the determination, payment and distribution of such compensation ,

(*v*) all claims for compensation payable under the Act to chief agents or special agents for contracts terminated under section 36 , and all matters connected with the termination, payment and distribution of such compensation ,

(*vi*) such supplemental, incidental or consequential matters which the Tribunal may deem it expedient or necessary to decide or determine for the purpose of securing that the jurisdiction vested in it under the Act and in respect of matters referred to above is fully and effectively exercised]

13 **Compensation** —The compensation payable under the Act shall be paid in cash

14 **Employees and Agents Relations Committee** —The representatives of the Corporation on the Employees and Agents Relations Committee constituted under sub-section (3) of section 22 of the Act for each zonal office at the Corporation and the representatives of the employees and agents on such Committee shall be nominated by the Corporation

15 **Term of office of members of Employees and Agents Relations Committee** —A member of an Employees and Agents Relations Committee shall hold office for a period of two years but shall be eligible for being renominated

16 **Casual vacancies in Employees and Agents Relations Committee** —(1) If any casual vacancy occurs in the office of a member of an Employees and Agents Relations Committee by death or resignation of such member or otherwise, the Corporation shall as soon as may be after the occurrence of the vacancy take immediate steps to fill the vacancy

(2) Every member appointed to fill a casual vacancy of such Committee shall continue in office for the unexpired term of his predecessor

17 **Report** —The Annual Report to be submitted by the Corporation to the Central Government under section 27 of the Act regarding its activities

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1 Ins. by G S R. 317, dated 30th April 1958

during the previous financial year shall be in such form as the Central Government may, from time to time, direct, and shall *inter alia* contain particulars in respect of the following matters, namely,—

(*a*) the extent of the new business ,

(*b*) the total amount of business in force ,

(*c*) the total amount of claims ,

(*d*) nature of investment , and

(*e*) the accounts

18 Allocation of paid up capital of composite insurer —For the purposes of the Explanation to sub-section (2) of section 7 and of clause (*b*) of sub-section (2) of section 10 of the Act, the part of the paid-up capital, or assets representing some paid up capital, as the case may be, allocated to the controlled business of an insurer shall be determined in the following manner, namely,—

(i) in respect of an insurer entitled to receive compensation under Part A of the First Schedule to the Act, the paid-up capital allocable to the controlled business shall be that proportion of the total paid-up capital of the insurer which the annual average of the profits from the controlled business during the period covered by the relevant actuarial investigation bears to the total of such annual average of profits *plus* two times the annual average of the profits from other business during that period

Provided that the paid-up capital so allocable to the controlled business shall not in any case exceed a sum of rupees six lakhs ,

(ii) in respect of an insurer entitled to compensation under Part B of the First Schedule to the Act, the paid-up capital allocable to the controlled business shall be the excess, if any, of the amount of liabilities of the insurer appertaining to such business in existence on the 19th day of January, 1956, computed as at that date in accordance with the provisions of paragraph 4 of Part B of the First Schedule to the Act over the value of the assets of the insurer appertaining to his controlled business (excluding the paid up capital allocable to controlled business) in existence on the 19th day of January, 1956, computed as at the date in accordance with the provisions of paragraph 3 of Part B of the First Schedule to the Act

Explanation 1 —"Profits from controlled business" means the share of the surplus allocated to the shareholder as disclosed in the abstract prepared in accordance with Part II of the Fourth Schedule to the Insurance Act in respect of the relevant actuarial investigations

Explanation 2 —"Profits from other business" means the total of the profits less losses transferred to "Profit and Loss Account" from the fire, marine and miscellaneous insurance revenue accounts prepared in accordance with Form F of the Third Schedule to the Insurance Act

Explanation 3 —"Relevant Actuarial Investigation" means such [illegible] number of latest actuarial investigations as at dates earlier than the [illegible] January, 1956 (not being less than 2 in any case) would leave the [illegible] vening between the date as at which the actuarial investigat[illegible]

PART IV-C

Modifications made in the Sections of the Insurance Act in their applicability to the Corporation

[*See* Section 43 (2)]

NOTIFICATION

G S R 734, the 23rd August, 1958 —In exercise of the powers conferred by sub-section (2) of section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956), the Central Government hereby directs that sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 102 to 106, 107 to 110, 111, 113, 114 and 116A of the Insurance Act, 1938 (4 of 1938), shall apply to the Life Insurance Corporation of India subject to the modifications specified herein, namely,—

1 Unless otherwise expressly provided references to an insurer, by whatever form of words in the sections hereby made applicable to the Life Insurance Corporation of India, shall be construed as references to the Life Insurance Corporation of India

2 In section 2D, after the words "of this Act", the words "made applicable to the Life Insurance Corporation of India under section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956)," shall be inserted

3 In section 10,—

(i) in sub-section (2), for the words "calendar year", the words "financial year" shall be substituted ,

(ii) sub-section (2A) shall be omitted

4 In section 11,—

(i) in sub section (1), for the words "calendar year", the words "financial year" shall be substituted ,

(ii) for sub section (2), the following sub-section shall be substituted, namely,—

"(2) The accounts and statements referred to in sub-section (1) shall be signed by the Chairman, a managing director and two other members of the Life Insurance Corporation of India and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business during the period to which such accounts and statements refer and by a report on the affairs of the business during that period ,"

(iii) sub-section (3) shall be omitted

5 In section 13, the provisos to sub-section (1) shall be omitted

6 In section 15,—

(i) for sub-section (2), the following sub-section shall be substituted, namely,—

"(2) Of the four copies so furnished, one shall be signed by the Chairman, a managing director and two other members of the Life Insurance Corporation of India, and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be ;"

(ii) sub-section (3) shall be omitted

7 In section 20, sub-section (3) shall be omitted

8 For section 27A, the following section shall be substituted, namely,—

"27A *Provisions regarding investments*.—(1) The Life Insurance Corporation of India shall invest, and at all times keep invested, twenty-five per cent of its controlled fund in Government securities and a further sum equal to not less than twenty-five per cent of the controlled fund in Government securities or other approved securities, and shall not invest, or keep invested, any part of the balance otherwise than in any of the following approved investments, namely,—

(*a*) debentures or other securities for money issued with the permission of the State Government by any municipality in a State ;

(*b*) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it ;

(*c*) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book-value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures ;

(*d*) cumulative preference shares of any company which has paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding, provided such preference shares have priority in payment over all the equity shares of the company in winding up ;

(*e*) cumulative preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the equity shares of the company in winding up ;

(*f*) shares of any company which have been guaranteed by another company, such other company having paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid up amount of preference and equity shares of the guaranteeing company ;

(*g*) shares of any company on which dividends of not less than four per cent including bonus have been paid for the five years immediately preceding or for at least five out of the seven years immediately preceding ;

(*h*) immovable property situated in India or in any other country where the Corporation is carrying on insurance business

Provided that the property is free of all encumbrances ;

(*i*) first mortgages on immovable property situated in India or any other country where the Corporation is carrying on insurance business

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the amount of mortgage money does not exceed fifty per cent of the value of the property ;

(*j*) loans to any authority or any co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force operating a housing or building scheme in India in any case where the payment of principal and interest is guaranteed by the Central or State Government ;

(*k*) first mortgages on immovable property situated in India under any housing or building scheme of a public limited company or a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force

Provided that the amount of mortgage money does not exceed three fourths of the value of the property ;

(*l*) loans on first mortgages of immovable property under any housing or building scheme of the Corporation for the benefit of the policy-holders

Provided that the amount of the loan does not exceed three-fourths of the value of the property ;

(*m*) loans on life interests, or on policies of life insurance within surrender values issued by the Corporation or by an insurer, the assets and liabilities of whose controlled business have been transferred to and vested in the Corporation or loans to employees of the Corporation for the purposes of purchasing or constructing houses or for the purpose of purchasing motor-cycles, motor cars or any other conveyances in accordance with any scheme approved by the Corporation ;

5 In section 13, the provisos to sub-section (1) shall be omitted

6 In section 15,—

(i) for sub-section (2), the following sub-section shall be substituted, namely,—

"(2) Of the four copies so furnished, one shall be signed by the Chairman, a managing director and two other members of the Life Insurance Corporation of India, and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be ;"

(ii) sub-section (3) shall be omitted

7 In section 20, sub-section (3) shall be omitted

8 For section 27A, the following section shall be substituted, namely,—

"27A *Provisions regarding investments*.—(1) The Life Insurance Corporation of India shall invest, and at all times keep invested, twenty-five per cent of its controlled fund in Government securities and a further sum equal to not less than twenty-five per cent of the controlled fund in Government securities or other approved securities, and shall not invest, or keep invested, any part of the balance otherwise than in any of the following approved investments, namely,—

(*a*) debentures or other securities for money issued with the permission of the State Government by any municipality in a State ;

(*b*) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it ;

(*c*) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures ;

(*d*) cumulative preference shares of any company which has paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding, provided such preference shares have priority in payment over all the equity shares of the company in winding up ;

(*e*) cumulative preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the equity shares of the company in winding up ;

(*f*) shares of any company which have been guaranteed by any other company, such other company having paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding

(8) The Central Government may, in the interests of the Corporation or its policy holders, require the Corporation not to invest its funds in any investment specified by it, or where it has any existing investment to realise them within a time to be specified

(9) Without prejudice to the powers given to the Central Government by sub section (8), nothing contained in this section shall be deemed to require the Corporation to realise any investment made in conformity with the provisions of sub-section (1) which after the making thereof has ceased to be an approved investment within the meaning of this section

(10) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature

Explanation —In this section, 'controlled fund' means all the funds of the Corporation appertaining to its life insurance business, capital redemption insurance business and annuity certain business, but does not include any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the Corporation to apply the provisions of this section "

9 In section 28A—

(i) in sub-section (1)—

(*a*) for the words "beginning of the year", the words "beginning of the financial year" shall be substituted ;

(*b*) for the words and figures "as at the 31st day of December of the preceding year", the words "as at the last day of the preceding financial year" shall be substituted

(ii) In sub-section (2)—

(*a*) for the words "quarters ending on the last day of March, June, September and December", the words "half-years ending on the last day of March and September" shall be substituted ;

(*b*) for the words "close of the quarter" the words "close of the half-year" shall be substituted

10 In section 40B,—

(*a*) in sub-section (2)—

(i) for the words "calendar year" and "year", the words "financial year" shall be substituted ;

(ii) in the proviso, the words "after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F" shall be omitted

(*b*) in the *Explanation*, clause (*a*) and sub clause (iii) of clause (*b*) shall be omitted

(n) life interests ,

(o) deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), or with co-operative societies registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force, the primary object of which is to finance other co operative societies similarly registered ,

(p) debentures of, or shares in, co-operative societies registered under the Co operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force ,

(q) such other investments as the Central Government may, by notification in the official *Gazette*, declare to be approved investments for the purposes of this section

(2) Notwithstanding anything contained in sub section (1), the Life Insurance Corporation of India may invest or keep invested any part of its controlled fund otherwise than in an approved investment, if after such investment the total amounts of all such investments do not exceed fifteen per cent of the amount of its controlled fund

Provided that the investment is made after securing the unanimous recommendation of its Investment Committee or if no such recommendation can be obtained on a resolution of the Corporation passed by a majority of at least three fourths of the members present at the meeting

(3) The Corporation shall not, out of the controlled fund, invest or keep invested in the equity shares of any one company more than thirty per cent of the subscribed equity share capital of the company except with the prior permission of the Central Government

Provided that nothing in this sub-section shall apply to any investment made by the Corporation in the equity shares of its subsidiary companies

(4) Where an investment is in partly paid up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentage referred to in sub-section (3)

(5) Where new shares are issued to the existing shareholders by a company, the existing shares of which are covered by clause (*d*) or clause (*e*) or clause (*f*) of sub-section (1) and of which the Corporation is already a shareholder, the Corporation may subscribe to such new shares

Provided that the proportion of new shares subscribed by it does not exceed the proportion which the paid up amount on the share held by it immediately before such subscription bears to the total paid up capital of the company at the time of such subscription

(6) If, on application made by the Corporation, the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may for such period, to extent and in relation to such particular investments and subject to such conditions as may be specified by in this behalf, exempt the Corporation from all or any of the provisions of sub-sections (3) and (5)

(7) The Corporation shall not, out of the controlled fund, invest or keep invested any sum in the shares or debentures of any private limited company except with the prior permission of the Central Government

(8) The Central Government may, in the interests of the Corporation or its policy holders, require the Corporation not to invest its funds in any investment specified by it, or where it has any existing investment to realise them within a time to be specified

(9) Without prejudice to the powers given to the Central Government by sub-section (8), nothing contained in this section shall be deemed to require the Corporation to realise any investment made in conformity with the provisions of sub-section (1) which after the making thereof has ceased to be an approved investment within the meaning of this section

(10) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature

Explanation —In this section, 'controlled fund' means all the funds of the Corporation appertaining to its life insurance business, capital redemption insurance business and annuity certain business, but does not include any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the Corporation to apply the provisions of this section "

9 In section 28A—

(i) in sub-section (1)—

(*a*) for the words "beginning of the year", the words "beginning of the financial year" shall be substituted ,

(*b*) for the words and figures "as at the 31st day of December of the preceding year", the words "as at the last day of the preceding financial year" shall be substituted

(ii) In sub-section (2)—

(*a*) for the words "quarters ending on the last day of March, June, September and December", the words "half-years ending on the last day of March and September" shall be substituted ,

(*b*) for the words "close of the quarter" the words "close of the half-year" shall be substituted

10 In section 40B,—

(*a*) in sub-section (2)—

(*i*) for the words "calendar year" and "year", the words "financial year" shall be substituted ,

(*ii*) in the proviso, the words "after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F" shall be omitted

(*b*) in the *Explanation*, clause (*a*) and sub clause (iii) of clause (*b*) shall be omitted

11 In section 44, for the *Explanation* to sub-section (1), the following *Explanation* shall be substituted, namely,—

Explanation —For the purposes of this sub-section,—

(i) "termination of his agreement", in relation to an insurance agent, includes termination by reason of his death ; and

(ii) service of an insurance agent under a chief agent of, or under an insurer whose life insurance business has been transferred to and vested in the Life Insurance Corporation of India shall be deemed to be service under the Corporation

12 In section 102,—

(i) in sub-section (1) for the words "where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm," the following shall be substituted, namely,—

"where the insurer is the Life Insurance Corporation of India, the chairman, any member, managing director, manager or other officer of the Corporation "

(ii) sub-section (2) shall be omitted

13 In section 103,—

(i) in sub-section (1), the words and figures "section 7 or section 98" shall be omitted ;

(ii) sub-section (3) shall be omitted

14 In section 105, in sub-section (1),—

(i) for the words "Any director, managing agent" the words "The chairman or any managing director or any other member" shall be substituted.

(ii) sub-section (2) shall be omitted

PART V

THE LIFE INSURANCE (EMERGENCY PROVISIONS) ACT, 1956

(IX of 1956)

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THE LIFE INSURANCE (EMERGENCY PROVISIONS) ACT, 1956

(No IX of 1956)

[21*st March*, 1956]

An Act to provide for the taking over, in the public interest, of the management of life insurance business pending nationalisation thereof

BE it enacted by Parliament in the Seventh Year of the Republic of India as follows

Short title

1. This Act may be called the Life Insurance (Emergency Provisions) Act, 1956

Definitions

2. In this Act, unless the context otherwise requires,—

(1) "appointed day" means the 19th day of January, 1956,

(2) "Controlled business" means—

(*i*) in the case of an insurer specified in sub clause (*a*) (*ii*) or sub-clause (*b*) of clause (9) of section 2 of the Insurance Act and carrying on life insurance business—

(*a*) all his business, if he carries on no other class of insurance business,

(*b*) all the business appertaining to his life insurance business, if he carries on some other class of insurance business also,

(*c*) all his business, if his certificate of registration under the Insurance Act in respect of general insurance business stands wholly cancelled for a period of more than six months on the appointed day,

(*ii*) in the case of any other insurer specified in clause (9) of section 2 of the Insurance Act and carrying on life insurance business—

(*a*) all his business in India, if he carries on no other class of insurance business in India,

(*b*) all the business appertaining to his life insurance business in India, if he carries on some other class of insurance business also in India,

(*c*) all his business in India, if his certificate of registration under the Insurance Act in respect of general insurance business in India stands wholly cancelled for a period of more than six months on the appointed day,

(iii) in the case of a provident society, as defined in section 65 of the Insurance Act, all its business

Explanation—An insurer is said to carry on no class of insurance business other than life insurance business if, in addition to life insurance business he carries on only capital redemption business or annuity certain business or both, and the expression "business appertaining to his life insurance business" shall be construed accordingly,

(3) "Costodian" means the person appointed under section 4 to take over the management of any controlled business,

(4) "Insurance Act" means the Insurance Act, 1938 (IV of 1938),

(5) "insurer" means an insurer as defined in the Insurance Act who carries on life insurance business in India, and includes a provident society as defined in section 65 of the Insurance Act,

(6) "notified order" means an order notified in the official *Gazette*,

(7) all other words and expressions used herein but not defined, and defined in the Insurance Act, shall have the meanings respectively assigned to them in that Act

1 **Object of the Act**—In the Statement of Objects and Reasons to the Act, it has been observed as follows

> "Government have during the last few months been studying the problems facing the insurance industry in its role as an effective instrument of mobilising people's savings and putting them to use in a constructive manner As a result of such study the present management of the industry has been found wanting in several respects"

By the amendment of the Insurance Act, which was effected in 1950, Government took powers to appoint Administrators to manage companies where the interests of the policy-holders were in grave jeopardy In the short period that has elapsed since then a number of companies had to be put under Administrators as investigation into their affairs revealed gross mismanagement—even embezzlement—very often resulting in insolvency It has been observed that with a few exceptions, the Indian Life Insurers are virtually controlled by individuals who are prone to utilise the funds of these companies to subsidise or prop up their investments in other ventures to the detriment of the industry and the policy-holder who is its back bone Tightening up the provisions of the Insurance Act is no remedy since it is only of a negative character Government have therefore decided to nationalise the life insurance business

A Bill to give effect to this decision will shortly be placed before Parliament It was essential, however, to save the interests of the policy-holders from damage, till legislation for this purpose was passed and put effect It was, therefore, necessary to issue an Ordinance styled Life Insurance (Emergency Provisions) Ordinance, 1956, vesting the

management of all life insurance business in India, including the business now managed by foreign insurers, in the Government and for appointment of Custodians to manage the business on behalf of Government The Ordinance also provided for the payment, on a reasonable basis, of compensation to the persons entitled thereto in respect of the Government taking over the management of the business

The present Act converts the Ordinance into an Act *See* Statement of Objects and Reasons, *Gazette of India*, Extraordinary, Part II, Section 2, No 2, dated 17th February, 1956, note also that this Act received the assent of the President on the 21st March, 1956, and was published in the *Gazette of India*, Extraordinary, dated 22nd March, 1956

The Life Insurance Corporation Act, 1956, lays down the permanent arrangements for nationalisation of all life insurance businesses in India whereby a Life Insurance Corporation of India has been set up with a share capital provided entirely by the Central Government into which have been integrated all the insurance companies engaged in life insurance business [1]

When the Central Government promulgated the Ordinance, on 19th January, 1956, for taking over the management of Life Insurance Companies, there were over 160 companies, Indian and foreign, who were transacting life insurance business in India The total number of policies recorded in the books of these companies was about 50 lakhs, assuring, with bonuses, more than Rs 1,000 crores, with an annual premium income of approximately Rs 55 crores The assets held by these insurers appertaining to the life insurance business amounted to about Rs 380 crores, from which a net income of approximately Rs 12 crores was derived annually But the *per capita* insurance in India is only a little over Rs 25 as compared to about Rs 9,000 in the U S A and about Rs 1,840 in the U K The object of the Life Insurance Corporation of India is to increase progressively the *per capita* life insurance to a figure of Rs 200, *i e*, to raise the total life insurance business in force to Rs 8,000 crores [2]

But after nationalisation the increase (87 4%) in the sums assured in 1960 over those in 1955 was slightly greater than the corresponding increase (83 9%) in 1955 over those in 1955 The smaller increase in the number of polices is compensated by the greater increase (32%) in the average sum assured per policy in 1960 over that in 1955 compared with the corresponding increase (16%) in 1955 over that in 1950 It shows that after nationalisation a higher proportion of the new life insurance business is obtained from persons in the higher income groups than in the lower income groups [3]

Definitions—

(i) "appointed day" has been defined to mean the 19th day of January, 1956, *i e*, the day on which the Life Insurance (Emergency Provisions) Ordinance, 1956 (Ordinance No I of 1956) was promulgated by the Central Government [4]

1 *See* Statement of Objects and Reasons *Gazette of India* Extraordinary 17th February 1956

2 Life Insurance Corporation of India Prospectus dated 1st September, 1957

3 Ind an Insurance Year Book 1961 p xxxviii

4 Vide *Gazette of India* Extraordinary Part II Section 1 No 2 dated the 19th January 1956

(ii) "Controlled business"—The expression has been given the same meaning as that given in the Life Insurance Corporation Act, 1956, except that life insurance business carried on by the Central Government or a State Government has not been included in this definition and the Explanation has been put after clause (ii) (c) [1]

(iii) "Custodian" has been defined to mean the person appointed under section 4 of the Act to take over the management of any controlled business, *i e*, a person appointed by the Central Government for the said purpose

(iv) "Insurance Act" means Act IV of 1938 [2]

(v) "Insurer" has been given the same meaning as that given in the Insurance Act, 1938, to an insurer carrying on life insurance business and also it includes a provident society as defined in section 65 of the said Act [3]

(vi) "Notified order" means an order notified in the official *Gazette, i e, Gazette of India* and in case of State Government, the *State Gazettes*

Sub-section (7) of section 2 gives in general terms just like sub-section (10) of section 2 of the Life Insurance Corporation Act, 1956, that the words and expressions not defined in this Act but used herein must be given the same meanings respectively to them as defined under the Insurance Act, 1938

Management of controlled business to vest in Government on commence ment of Act

3 (1) On and from the appointed day, the management of the controlled business of all insurers shall vest in the Central Government, and, pending the appointment of a Custodian for the controlled business of any insurer, the persons in charge of the management of such business immediately before the appointed day shall, on and from the appointed day, be in charge of the management of the business for and on behalf of the Central Government, and the controlled business of the insurer shall be carried on by them subject to the provisions contained in sub-sections (3) and (5) and to such further directions, if any, as the Central Government may give to them by notice addressed and sent to the principal officer of the insurer

(2) Any contract, whether express or implied, providing for the management of the controlled business of an insurer made before the appointed day between the insurer and any person in charge of the management of such business immediately before the appointed day shall be deemed to have terminated on the appointed day

(3) No insurer shall, without the previous approval of the person specified by the Central Government in this behalf in respect of that insurer (hereinafter referred to as the authorised person),—

1 *See* Notes under section 3 of the Life Insurance Corporation Act 1956 *post* Same meaning has been given in Act 31 of 1956 *see* section 2 (5) of the said Act *post*

3 *See* section 2(6) of Act 31 of 1956 and Notes thereto *post*

'(a) make any payment or grant any loan in respect of a policy of life insurance otherwise than in accordance with the normal practice observed by him in respect of such matters immediately before the appointed day ,

(b) incur any expenditure from the assets appertaining to the controlled business otherwise than for the purpose of making routine payments of salaries or commissions to employees, insurance agents, special agents or chief agents or for the purpose of meeting the routine day to-day expenditure ,

(c) transfer or otherwise dispose of any such assets or create any charge, hypothecation, lien or other encumbrance thereon ,

(d) invest in any manner any moneys forming part of such assets ,

(e) acquire any immovable property out of any moneys forming part of such assets ,

(f) enter into any contract of service or agency, whether expressly or by implication, for purposes connected wholly or partly with the controlled business or vary the terms and conditions of any such contract subsisting on the appointed day ,

(g) enter into any other transaction relating to controlled business other than a contract relating to the issue of a new policy of life insurance or vary the terms and conditions of any agreement relating to any such transaction subsisting at the commencement of this Act

(4) The approval of the authorised person may be given either generally in relation to certain classes of transactions of the insurer or specially in relation to any of his transactions

(5) Every insurer shall deposit all securities and documents of title to any assets appertaining to the controlled business in any Scheduled Bank in which the insurer had an account immediately before the appointed day or in any branch of the State Bank in the place where the head office or the principal office of the insurer is situated or, where there is no branch of the State Bank in such place, the nearest branch of the State Bank , and no such security or document shall be withdrawn from the Scheduled Bank or the State Bank, as the case may be, except with the permission of the authorised person

Provided that nothing contained in this sub-section shall apply to any security or document of title kept with the approved trustees by reason of the provisions contained in sub-section (6) of section 27 of

the Insurance Act, or kept in trust with an Official Trustee in pursuance of the articles of association of an insurer unless the Central Government, by notified order, otherwise directs

Explanation —In this sub-section,—

(*a*) "Scheduled Bank" means a bank included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 ,

(*b*) "State Bank" means the State Bank of India constituted under the State Bank of India Act, 1955.

(6) Every insurer shall deliver forthwith at the place and to the person specified in this behalf by the Central Government in respect of that insurer the following documents, namely,—

(*i*) the minutes book or any other book in India containing all resolutions up to the appointed day of the persons in charge of the management of the controlled business before the appointed day ,

(*ii*) the current cheque books relating to the controlled business which are at the head office or the principal office of the insurer ,

(*iii*) all registers or other books containing particulars relating to the investment of any moneys appertaining to the controlled business including investments on mortgaged properties and all loans granted and advances made otherwise than on policies ,

(*iv*) all broker's notes or certificates in the possession of the insurer in respect of any orders for the investment of any moneys appertaining to the controlled business

Provided that if any document specified in this sub-section is relevant for the purpose of any business other than the controlled business carried on by the insurer, theperson specified in the notified order shall be bound to return it to the persons in charge of the management of such other business with the least possible delay, but shall have power to place identification marks on such document or to take extracts or copies therefrom

(7) Without prejudice to the generality of the powers conferred by sub-section (1) and to the provisions contained in sub-sections (3), (5) and (6 , any directions issued under sub-section (1) may require the persons in charge of the management of the controlled business of an insurer under this Act to furnish to the Central Government or to the authorized person such returns, statements and other information relating to the controlled business as may be mentioned in the

(8) The persons in charge of the management of the controlled business of an insurer under this Act shall be entitled to such remuneration, whether by way of allowance or salary as the Central Government may fix, and any such person may, by giving a month's notice in writing to the Central Government of his intention so to do, relinquish charge of the management of the controlled business

SYNOPSIS

1 *Object*
2 *Scope*
3 *Whether the insurer as such vests in the Central Government ?*
4 *Duties of the persons in charge during the interim period*
5 *Duties of insurer*
6 *Remuneration of, and relinquishment of office by, the person in charge*

1 Object —The object of this section is to take over management of the life insurance business of all the insurers as a going concern without causing in the least any disturbance or hindrance to the day-to-day management of that business of the insurers concerned and to nationalise the said business through evolutionary stages, firstly by keeping the management in the hands of the persons who were already in charge thereof, secondly, by transferring same to a Custodian or a specified person, and lastly, by transferring same to and vesting in the Corporation constituted under the Life Insurance Corporation Act, 1956

2 Scope —This section lays down that on and from the 19th day of January, 1956, the management of the controlled business of an insurer must vest in the Central Government, but pending the appointment of a Custodian under this Act, the management of such business would rest with the persons in charge thereof who were in such charge immediately before the said date and such persons must manage the said business for and on behalf of the Central Government The persons' duties in this regard have been defined in sub-sections (3) and (5) Apart from these, they are also required to carry out the directions as the Central Government may give to them in this regard, from time to time, by notice addressed and sent to the principal officer of the insurer Provisions for remuneration of these persons also for their relinquishment of office have also been made in sub-section (8) It also provides that any contract between the insurer concerned and any person, regarding the management of the controlled business, entered into immediately before the said date stands terminated on and from 19th January, 1956

3 Whether the insurer as such vests in the Central Government ?— Under this section the management of the insurer pertaining to his controlled business undoubtedly vests in the Central Government The Custodian who is to be in charge of the management has also to be appointed by the Central Government and as an *interim* measure the persons in charge of the management of the said business for the time being has been put in charge of its controlled business for and on behalf of the Central Government But the question still remains whether the employees of the insurer become the servants of the Central Government by virtue of this vesting

The Company as such does not vest in the Central Government It is only the management which vests in the Central Government The employees still continue to be the employees of the insurer control over the employees after the said vesting has to be exercised Central Government through the Custodian appointed by such

nonetheless the employees still continue to be in the service of the insurer The insurer company as such does not lose his legal entity and the relationship of the employer and the employee continues between the insurer and its employee Hence by virtue of the vesting of the management of the insurer's controlled business, the employees of the insurer do not become the employees of the Central Government as the latter does not become a substitute of the insurer company by coming into force of this Act [1]

4 **Duties of the persons in charge during the interim period** — The duties of the persons in charge of the management on and from 19th January, 1956, are

(i) they must not make any payment or grant any loan or incur any expenditure from the assets of the controlled business save and except the routine day-to-day expenditure ,

(ii) they must not transfer or otherwise dispose of any such assets by way of charge, hypothecation or other encumbrance or otherwise ,

(iii) they must not invest any moneys relating thereto in any manner nor acquire any immovable property out of the said moneys ,

(iv) they must not enter into any contract of service or agency with any person nor vary the terms and conditions of contract existing at the appointed day nor enter into any other transactions whatsoever save and except contracts relating to the issue of new life policies , and

(v) they must deposit all securities and documents of title to any assets of the controlled business either in the Scheduled Bank having account with the insurer or in any branch of the State Bank or any of its nearest branch in the place where the head office or the principal office of the insurer is situated nor must they withdraw any such securities or documents from any of the said banks except permitted so to do by the authorised person

In all their duties aforementioned they must be guided by the directions of the authorised person, that is to say, without his previous approval they must not do or suffer from doing those acts and things Moreover, the duties to deposit all securities and documents in the bank as aforesaid shall not be applicable to approved trustees as contemplated under sub-section (6) of section 27 of the Insurance Act or official trustee Further, the persons in charge are also required to furnish to the Central Government or to the authorised person such returns, statements and other information relating to the controlled business as may be mentioned in the direction [2]

5 **Duties of insurer** —The duties of every insurer as envisaged under sub-section (6) of this section are that he must deliver forthwith at the appointed place and to the specified person made by the Central Government the following documents relating to him, namely,—

(i) the minutes book or any other book recording resolutions ,

(ii) current cheque books remaining in the head or principal office ,

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1 *Madan Mohan Lal v. Om Prakash* A I R 1957 All 384 at p 386 *Manikumra v. Hindusthan Co-operative Insurance Society, Ltd* 66 C W N 774 ; 1962 Cal 625

2. For penalties *see* section 9, *infra*

(iii) all registers or other books where particulars of investments are recorded, and all loans granted and advances made otherwise than on policies, and

(iv) all broker's notes or certificates regarding any orders for investments

But if any of the above documents are required by the insurer as being relevant for any other business, the person specified must return same to the persons in charge of the management either making identification marks thereon or taking extract or copies therefrom [1]

6 Remuneration of, and relinquishment of office by, the persons in charge —The Central Government has been given the discretion to fix the remuneration of the persons in charge while they will remain in charge of the controlled business Such remuneration may be either by way of allowance or salary

Any of the person in charge of the management has been given the option to relinquish his office by giving a month's notice in writing to the Central Government

Power of Central Government to appoint Custodians to take over management of controlled business

4 (1) The Central Government may, as soon as it is convenient administratively so to do, appoint any person as Custodian for the purpose of taking over the management of the controlled business of an insurer

(2) On the appointment of a Custodian under sub-section (1) all persons in charge of the management of the controlled business of the insurer for and on behalf of the Central Government immediately before such appointment shall cease to be in charge of such management and shall be bound to deliver to the Custodian all books of account, registers or other documents in their custody relating to the controlled business of the insurer

(3) Nothing contained in sub sections (3), (5) and (6) of section 3 shall apply to any insurer, the management of whose controlled business has been taken over by the Custodian, but the Central Government may issue such directions to the Custodian, as to his powers and duties as it deems desirable in the circumstances of the case, and the Custodian may apply to the Central Government at any time for instructions as to the manner in which he shall conduct the management of the controlled business of the insurer or in relation to any matter arising in the course of such management

(4) The Custodian shall receive such remuneration as the Central Government may fix, and the Central Government may at any time cancel the appointment of any person as Custodian and appoint some other person in his stead

1 For penalties *see* section 9 *infra*.

SYNOPSIS

1 *Scope*
2 *Duties of "persons in charge" vis-a-vis the "Custodian"*
3 *Duties of Custodian*
4 *Remuneration and removal of Custodian*

1 Scope —The second stage in the process of nationalisation of life insurance business in India is the appointment of Custodians for the purpose of taking over the management of the said business defined herein as the 'controlled business' For the purpose the Central Government has been empowered to appoint such Custodians, to fix their remuneration and to cancel their appointment and to appoint some other persons in their places This section also defines their duties and also of the persons in charge of the management to the Custodians

2 Duties of "persons in charge" vis-a vis the "Custodian" —Sub-section (2) of this section defines the duties of the persons in charge of the management of the controlled business when a Custodian is appointed by the Central Government in respect of the said business The effect of the appointment of a Custodian is that the management of the controlled business by the 'persons in charge' must cease on and from the date of such appointment The duties of the persons in charge' are that they must deliver to the Custodian all books of account, registers or other documents in their custody relating to the controlled business of the insurer It may be noted in this connection that the documents already delivered by them to the specified person in terms of sub-section (6) of section 3 do not come within the purview of this sub-section

3 Duties of Custodian —Sub-section (3) in general terms defines the duties of the Custodian appointed by the Central Government under this section He has been given the absolute discretion to perform his duties and exercise his powers according as the circumstances of the case may arise and in relation to the directions given to him from time to time by the Central Government But at the same time he has been given the discretion to apply to the Central Government to seek instructions from the Central Government regarding any matter which arises in the course of his management [1]

4 Remuneration and removal of Custodian —Sub-section (4) confers absolute powers on the Central Government to fix the remuneration of the Custodian; to cancel his appointment and to appoint any other person in his place as Custodian Whatever remuneration will be fixed by the Central Government as payable to a Custodian, the latter is bound to accept same On the cancellation of his appointment which can be made by the Central Government at any time, the Custodian will be removed from his office

Refund of deposits made under Insurance Act

5 The Central Government may, by order, direct that the whole or any part of the deposit appertaining to his controlled business made by an insurer under section 7, section 73, or section 98 of the Insurance Act, as the case may be, shall be returned to the Custodian who has been appointed to take over the management of the controlled business of the insurer, and every such order shall have effect notwithstanding anything contained in the Insurance Act

1 For powers of the Custodian *see* section 6 *post*

This section confers discretionary power on the Central Government to direct, by issuing an order to that effect, the return of deposits made by an insurer or a provident society or a Mutual Life Insurance Company and a Co-operative Life Insurance Society, under the Insurance Act, 1938 to the Custodian appointed to take over the management of the controlled business Such order may cover the whole or any portion of the said deposits Presumably the order should be issued on the Reserve Bank of India and notwithstanding the provisions of section 9 and sub-section (2) of section 73 of the Insurance Act, 1938, the order thus made by the Central Government shall have effect The deposits that can be ordered to be returned to the Custodian under this section must relate to deposits relating to the life insurance business of the insurer and not to deposits which relate to his other class of insurance business

It may be noted that an insuer has to keep deposited with the Reserve Bank of India in respect of his life insurance business a sum of two hundred thousand rupees, a provident society has to keep deposited in the same bank a sum of fifty thousand rupees and a Mutual Life Insurance Company or a Co-operative Life Insurance Society has to keep so deposited with the said bank a sum of two hundred thousand rupees [1]

The refund of such deposits can only be made to them by an order of the Court as provided in section 9 of the said Act [2]

Power of Custodian to institute proceedings etc

6 The Custodian may, in relation to the controlled business of any insurer, the management of which has been taken over by him, exercise all or any of the powers which the Controller of Insurance or an Administrator appointed under section 52A of the Insurance Act may exercise under section 52 BB, section 106 or section 107 of that Act

This section defines the powers of the Custodian regarding the controlled business of an insurer whose management he has taken over in accordance with the provisions of section 4 of the Act This section confers on him generally all the powers of the Controller of Insurance which he exercises in relation to life insurance business of an insurer under the Insurance Act and in particular he has been given the powers of an Administrator appointed under section 52-A of the said Act, namely, the powers of (i) applying to the Court for an order of restoration of any property of the insurer relating to his controlled business or for compensation, (ii) prohibiting the insurer or any person from transferring or otherwise disposing of any property which in his opinion would be liable to attachment in a proceeding under section 106 of the Insurance Act, and(iii) instituting any proceedings under the said Act against an insurer, or any director, managing agent, manager, secretary or other officer or any employee or agent of the insurer or any person making default in complying with the provisions of section 41 without previous sanction of the Advocate, General [3]

1 *See* sections 7 73 and 98 and notes thereto under the Insurance Act 1938

2. *See* section 9 and Notes thereto under the Insurance Act *supra*

3 For powers of the Controller *see* Notes under section 2B and Administrator's powers *see* Notes 3 6 and 7 under section 52BB Notes 4 and 6 under section 106 and Note 2 under section 107 of the Insurance Act *supra*

Compensation for management of controlled business vesting in the Central Government

7 The amount of compensation payable in respect of the vesting in the Central Government of the management of the controlled business of an insurer shall, for every month during which the management there of remains vested in the Central Government, be a sum which is equivalent to one-twelfth of the annual average of the share of the surplus allocated to shareholders as disclosed in the abstracts prepared in accordance with Part II of the Fourth Schedule to the Insurance Act in respect of the last two actuarial investigations relating to the controlled business as at dates earlier than the first day of January, 1956

Provided that if in this respect of the controlled business of an insurer no such surplus as is referred to in this sub-section has been allocated to shareholders either because there are no shareholders or for any other reason, the compensation shall be payable at the rate of one rupee per month for every two thousand rupees or part thereof of the premium income of the insurer relating to his controlled business during the year 1954

This section lays down that compensation to the insurer whose controlled business vested in the Central Government during the period so long as the management of the said business would remain vested in such Government The section also lays down the methods of calculating the compensation payable to the insurer concerned The compensation to be computed according to the principles laid down in this section has to be paid every month during which the management remains vested in the Central Government In computing the compensation two principles have been laid down to be followed—one, in respect of insurers having shareholders and surplus ' ' to suc'/ and the other, in respect of insurers whc sharehol having shareholders but surplus is not allocab other case of the latter compensation is payable mont Rs 2,000 or part thereof of the premium in the c it is 1/12th of the annual of the - holders as per abstract pr Insurar as at dates 1st

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Provided that in the case of an insurer who is Company, the tral Government shall have due regard to the wishes of the ibers expressed by them at any general meeting convened for the pose

This section lays down how the compensation under section 7 is to be and the manner in which and to whom the said compensation is to be ibuted among the persons entitled thereto.

Sub-section (1) provides that the compensation is payable, in the first ince out of the 7½% of the surplus allocated to or reserved for the share- ers according to proviso 2 of sub-section (1) of section 49 of the Insurance earned by the insurer concerned during the period of his controlled busi- being vested in the management of the Central Government but when compensation or any part thereof could not be so paid out of the said entage of the surplus, the Central Government has to make due provision eof and must make payment

Sub-section (2) provides that the persons to whom and the manner in h the said compensation shall be distributed have to be prescribed by the tral Government by rules made therefor But where the insurer is a ipany the Central Government must give due regard to the wishes of members expressed in resolutions adopted at any general meeting of the abers convened for the purpose

9 If any person—

allies,

(*a*) fails to deliver to the Custodian any books of account, registers or any other documents in his custody relating to the controlled business of an insurer in respect of the management of which the Custodian has been appointed , or

(*b*) retains any property of such insurer appertaining to the controlled business of the insurer , or

(*c*) fails to comply with the provisions contained in sub-section (3) or sub section (5) or sub-section 6 of section 3 , or

(*d*) fails to comply with any directions issued under sub-section (1) or sub-section (7) of section 3 ;

shall be punishable with imprisonment which may extend to six nths, or with fine which may extend to one thousand rupees, or th both

This section makes certain acts and omissions and non-compliance h the provisions of certain sections of the Act penal The penalty provid herein is imprisonment extending to six months or fine extending to 1,000, or such punishment may be both imprisonment and fine.

Failure to deliver any books of account, registers or any other nts to the Custodian or retaining any property of the insurer c controlled business has been made penal Further, non-compli provisions of sub-section (3), (5) or (6) of section 3 and of any ued under sub-sect on (1) or sub-section (7) of the same en made penal under this section Hence the 'persons anagement of the controlled business pending the appointment

dian under the Act have to come within the mischief of this section, if they fail to comply with the duties entrusted to them in respect of the controlled business in terms of section 3 of this Act [1]

Insurer not to be wound up by Court

10 No proceeding for the winding up of an insurer, the management of whose controlled business has vested in Central Government under this Act or for the appointment of a Receiver in respect of such business shall lie in any Court.

This section provides that after the management of the controlled business of an insurer has vested in the Central Government according to the provisions of this Act, no proceeding for the winding up of that insurer under section 53 of the Insurance Act, 1938, is maintainable nor can any application or any proceeding for appointment of a Receiver in respect of the said business be entertained by any Court In other words, on and from 19th January, 1956, no Court should entertain any application for the winding up of an insurer nor for the appointment of a Receiver in respect of his life insurance business

Exclusion of time of Act for computing period of limitation

11 In computing the period of limitation prescribed by any law for the time being in force for any suit or application against any person by an insurer in respect of any matter arising out of his controlled business, the time during which the Life Insurance (Emergency Provisions) Ordinance, 1956, and this Act have been in force shall be excluded

The section excludes the period during which the Life Insurance (Emergency Provisions) Ordinance, 1956 and this Act have been in force from computing the period of limitation prescribed by the Limitation Act or any other law for the time being in force for any suit or application against any person by an insurer in respect of any matter concerning his controlled business The said Ordinance came into force on 19th January, 1956 Thus, if the period of limitation for a suit against any debtor to the insurer falls after 19th January, 1956, or on any day when his Act is in force, the suit will be in time if it is filed within the period when this Act is in force or the Ordinance was in force But this section will be of no avail for excluding the period of limitation after the coming into force of the Life Insurance Corporation Act, 1956 [2]

Effect of Act on other laws

12. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law or any instrument having effect by virtue of any other law

This section saves the provisions of this Act being challenged as being inconsistent with any other law for the time being in force or any instrument having effect by any other law In other words, even if it be found that any of the provisions of this Act is inconsistent with any other law, the provision of this Act will prevail Thus it avoids any conflict of law

Delegation of powers

13 The Central Government may, by notified order, direct that all or any of the powers exercisable by it under this Act may also be exercised by any such person as may be specified in the order

1 *See* Notes under section 3 *supra*

2 *Janakiramayya* v *Life Insurance Corporation*, (1961) 31 Com Cas (Ins) 82 1962 Andh Pra 63,

This section confers discretionary powers on the Central Government to delegate all or any of its powers under this Act to any person specified by it in the order notified in the official *Gazette* The person to whom such powers are delegated as aforesaid can exercise those powers only by virtue of the delegation The powers exercised by him would amount to as if the Central Government exercised those powers The power to delegate conferred by this section being discretionary, the exercise of that power within the limits of the discretion will not be open to challenge in a Court of law [1] But when doubt arises as to the interpretation or construction of the powers, the maxim that *verba cartarum fortius accipiuntur contra proferentem* or that words are to be understood most strongly against him who uses them should justly be applied The benefit of the doubt should be given to him who might be prejudiced by the exercise of the powers which the enactment grants and against him who claims to exercise those powers [2]

14. (1) No suit, prosecution or other legal proceedings shall lie against any Custodian or authorised person in respect of anything which is in good faith done or intended to be done under this Act

Protection of action taken under the Act

(2) No suit or other legal proceeding shall lie against the Central Government or any Custodian or authorised person for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act

This section gives protection to the Central Government, the Custodian and the authorised person from being proceeded against in any suit or other legal proceeding and the latter two from being prosecuted But in every case the good faith of the thing done or intended to be done under this Act would give this protection, otherwise not [3]

15 It is hereby declared that no person who holds any office of profit under an insurer, the management of whose controlled business has vested in the Central Government under this Act, shall be disqualified, or ever to have been disqualified, for being chosen as, or for being a member of either House of Parliament

Prevention of disqualification for membership of Parliament

This section saves a person from being disqualified to be a member or being chosen as a member of either House of Parliament by reason of his holding any office of profit under an insurer, the management of whose controlled business has vested in the Central Government under this Act

16 Nothing contained in this Act shall apply to—

Exemption

(*a*) any insurer in respect of the management of whose affairs an Administrator has been appointed under section 52-A of the Insurance Act,

(*b*) any insurer whose business is being voluntarily wound up or is being wound up under the orders of a Court,

(*c*) any insurer to whom the Insurance Act does not apply by reason of the provisions contained in section 2 E thereof,

1 Maxwell Interpretation of Statutes page 305

2. *Ibid* page 306

3 *See* also Notes under section 47 Life Insurance Corporation Act, *supra*

(*d*) any approved superannuation fund as defined in clause (*a*) of section 58N of the Indian Income Tax Act, 1922 , or

(*e*) any insurance business carried on by the Government

The provisions in clauses (*b*), (*c*) and (*d*) of this section have been re enacted in section 44 under clauses (*a*), (*b*) and (*e*) of the Life Insurance Act, 1956, provisions in clause (*a*) have been re enacted in clause (*c*) of the said Act in a modified way and provisions in clause (*e*) have been more or less given effect to in clauses (*d*) and (*f*) of the said Act specifically mentioning the schemes which do not come within the meaning of "carrying on life insurance" business of the Government [1]

17. (1) The Central Government may, by notified order, make rules to carry out the purposes of this Act

Power to make rules

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under sub section (1) may provide for—

(*a*) the form and manner in which books of accounts appertaining to controlled business shall be maintained by insurers ,

(*b*) the manner in which any compensation payable under this Act may be paid to the persons entitled thereto ,

(*c*) the circumstances in which the remuneration payable to persons in charge of the management of the controlled business of an insurer under this Act or to Custodian shall be met by the Central Government, whether wholly or in part

Under this section the Central Government has made a rule that the compensation payable to the persons entitled thereto under this Act shall be paid in cash [2]

If a rule purports to have been made under one provision, it cannot be sustained under another provision even though it could have been made under it It is essential that an authority making a regulation in the exercise of a power conferred by a statute states it in the regulation itself, so that public may know at once whether it is *ultra vires* or *intra vires* and may act accordingly A regulation is made for the public and the public have a right to know the authority under which it is made, as soon as it is made, so that they know whether they are bound by it or not [3]

Where Parliament has delegated its legislative function to the Central Government without a condition that an order made by the Central Government should be laid before the Parliament and be subject to annulment by Parliament, the Court has the right and duty to decide whether the Central Government has acted within the limits of its delegated power [4]

18 *Repeal of Ordinance I of 1956 and savings* (*Repealed by Act LVIII of 1960*)

1 *See* Notes under section 44 Life Insurance Corporation Act 1956 *supra*

2. *Vide* S R O 527 dated 15th February 1957 *Gazette of India* Extraordinary date 15th February 1957

3 *P State v Murtaza Ali* 1961 A. L. J 287 1961 All 477 (F B) *per* Desai C J

4 *See* Maxwell Interpretation of Statutes page 305 *see* also Notes under section 114 of the Insurance Act and section 48 of the Life Insurance Corporation Act , *supra*

APPENDIX I

CALCUTTA HIGH COURT NOTIFICATION

High Court at Calcutta

Calcutta, the 31st July, 1957

It is ordered by the High Court at Calcutta, that with effect from the date of publication in the *Calcutta Gazette*, the following rules under section 106 (14-*a*) and (14-*b*) of the Insurance Act, 1938, as substituted by section 4 of the Insurance (Second Amendment) Act, 1955, be adopted and be made Rules of the Court and be incorporated in the High Court, Original Side Rules, 1914 (4th Edition), as Part 13, Chapter XXXVIII of the said rules

Rules made under section 106 (14-a) of the Insurance Act, 1938, as substituted by section 4 of the Insurance (Second Amendment) Act, 1955

1 Every application under section 106 of the Act shall be made on the Original Side of the Court

2 Every such application shall be entitled in the matter of the Act and in the matter of the applicant

3 Every such application shall be made by motion and shall be supported and answered by affidavits, unless in lieu thereof or in addition thereto, the Court shall direct oral testimony to be taken

4 Any rule granted on such application shall, unless the Court otherwise orders, be made returnable on a day to be fixed therein The provisions of Chapter XX of the Original Side Rules shall *mutatis mutandis* apply to rules issued under this section

5 When any cause is shown or answer made upon affidavit, putting in issue any material question of fact, the Court may adjourn the matter to some early day for hearing upon the testimony of witnesses to be examined in like manner as in a suit

6 When a matter is adjourned for hearing upon the testimony of witnesses, either party may obtain summons to witnesses and the procedure in all other respects shall be similar to that followed in a suit

7 While granting the rule, the Court may make an interim order of attachment of the property of the delinquent or property which may be deemed to belong to the delinquent within the meaning of sub-section (5) of section 106 of the Act or any property of the insurer in the possession within the meaning of section 106(4) (*b*) (*i*) of the Act, or any property transferred by the delinquent within two years before the commencement of proceedings, under sub-section (*i*) or during the pendency of such proceedings if the Court is satisfied by affidavit or otherwise that transfer was otherwise than in good faith or consideration with the meaning of section 106 (4) (*b*) (*iii*) of the Act

8 Any third person, claiming the property attached or having any objection to the attachment thereto, may apply to the Court to have such attachment set aside The Court shall thereupon proceed to investigate the claim or objection in a summary manner and for the purpose may examine on oath the claimant or objector

3 After hearing such third person or any other person who may subsequently be ordered to appear, the Court may pass order as it shall think fit upon such terms with respect to the claim or objection of such third person as it shall seem just and reasonable

10 When any proceeding stands transferred to this Court under the provisions of sub section (13) of section 106 of the Act, the applicant in such proceeding shall by letter request the Registrar to write to the Court from which the proceeding stands transferred to transmit the records thereof to this Court

11 The Registrar, on being satisfied that the proceeding so stands transferred, shall address a letter to the Court where the proceeding was pending asking for the records thereof

12 After the records have arrived, the Registrar shall give notice to the parties to the proceeding, stating that it will be placed before the Court for directions Such notice shall, at least a fortnight before the date fixed for directions, be sent to the addresses of the parties as may be found in the records of the proceeding Where the records are not received, the Registrar shall place the matter before the Court taking Company matters for directions

13 On the date when the matter comes up for directions, the Court may give such directions as it may think proper for the hearing thereof

14 If the records are in a language other than English, they shall be translated into English as soon as possible The translation may, with the sanction of the Court, be made by either party or by such person and/or in such manner as the parties may agree

15 In all such transferred proceedings it shall not be obligatory to engage attorneys, but all advocates, whether entitled to practise on the Original Side or not, attorneys and pleaders shall be entitled to act and plead therein

16 A Register shall be kept and maintained in the Registrar's office in which all proceedings transferred under sub-section (13) of section 106 of the Act shall be entered and marked serially

Rules under section 106 (14-*b*) *of the Insurance Act*, 1938, *as substituted by section 4 of the Insurance* (*Second Amendment*) *Act*, 1955

1 Every Insurance Company, having its registered office within the jurisdiction of this Court, must file its Memorandum of Association and Articles of Association and all subsequent amendments thereto with the Registrar, Original Side

2 Every such Company shall, each year, file with the Registrar, Original Side, a copy of its Annual Balance Sheet, duly audited which copy shall be verified by its principal officer and be submitted by the Registrar to the Full Court

APPENDIX II

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

NOTIFICATION

New Delhi, the 23rd August, 1958

G S R -734 —In exercise of the powers conferred by sub-section (2) of section 43 of the Life Insurance Corporation Act, 1956 (XXXI of 1956), the Central Government hereby directs that sections 2D, 10, 11, 13, 14, 15, 20, 21, 22, 23, 25, 27A, 28A, 35, 36, 37, 40, 40A, 40B, 43, 44, 101 to 106, 107 to 110, 111, 113, 114 and 116A of the Insurance Act, 1938 (IV of 1938), shall apply to the Life Insurance Corporation of India subject to the modifications specified herein, namely,—

1 Unless otherwise expressly provided, references to an insurer, by whatever form of words, in the sections hereby made applicable to the Life Insurance Corporation of India, shall be construed as references to the Life Insurance Corporation of India

2 In section 2D, after the words "of this Act", the words "made applicable to the Life Insurance Corporation of India, under section 43 of the Life Insurance Corporation Act, 1956" shall be inserted.

3 In section 10,—

(i) in sub-section (2), for the words "calendar year", the words "financial year" shall be substituted,

(ii) Sub-section (2A) shall be omitted

4 In section 11,—

(i) in sub-section (1), for the words "calendar year", the words "financial year" shall be substituted,

(ii) for sub-section (2), the following sub-section shall be substituted, namely,—

"(2) The accounts and statements referred to in sub-section (1) shall be signed by the chairman, a managing director and two other members of the Life Insurance Corporation of India, and shall be accompanied by a statement containing the names, descriptions and occupations of, and the directorship held by, the persons in charge of the management of the business during the period to which such accounts and state ments refer and by a report on the affairs of the business during that period",

(iii) sub-section (3) shall be omitted

5 In section 13, the provisos to sub-section (1) shall be omitted

6 In section 15,—

(i) for sub-section (2), the following sub-section shall be substituted, namely,—

"(2) Of the four copies so furnished, one shall be signed by the chairman, a managing director and two other members of the Life Insurance Corporation of India, and one shall be signed by the auditor who made the audit or the actuary who made the valuation, as the case may be",

(ii) sub section (3) shall be omitted

7 In section 20, sub-section (3) shall be omitted

8 For section 27A, the following section shall be substituted, namely,—

"27A (1) The Life Insurance Corporation of India shall invest, and at all times keep invested, twenty-five per cent of its controlled fund in Government securities and a further sum equal to not less than twenty-five per cent of the controlled fund in Government securities or other approved securities, and shall not invest, or keep invested, any part of the balance otherwise than in any of the following approved investments, namely,—

(a) debentures or other securities for money issued with provisions regarding the investments, the permission of the State Government by any municipality in a State ,

(b) debentures secured by a first charge on any immovable property, plant or equipment of any Company which has paid interest in full for the five years immediately preceding or for at least five out of six or seven years immediately preceding on such or similar debentures issued by it ,

(c) debentures secured by a first charge on any immovable property, plant or equipment of any Company where either the book-value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures ,

(d) cumulative preference shares of any Company which has paid dividends on its equity shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding, provided such preference shares have priority in payment over all the equity shares of the Company in winding up ,

(e) cumulative preference shares of any Company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the equity shares of the Company in winding up ,

(f) shares of any Company which have been guaranteed by another Company, such other Company having paid dividends on its equity shares for the five years immediately preceding or for at least five out of six or seven years immediately preceding

Provided that the total amount of shares of all the Companies under guarantee by the guaranteeing Company is not in excess of fifty per cent of the paid-up amount of preference and equity shares of the guaranteeing Company ,

(g) share of any Company on which dividends of not less than four per cent including bonus have been paid for the five years immediately preceding or for at least five out of the seven years immediately preceding ,

(*h*) immovable property situated in India or in any other country where the Corporation is carrying on insurance business

Provided that the property is free of all encumbrances ;

(*i*) first mortgages on immovable property situated in India or in any other country where the Corporation is carrying on insurance business ;

Provided that the property mortgaged is not leasehold property with an outstanding term of less than thirty years and the amount of mortgage money does not exceed fifty per cent of the value of the property ;

(*j*) loans to any authority or any Co-operative Society registered under the Co operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force operating a housing or building scheme in India in any case where the payment of principal and interest is guaranteed by the Central or State Government ;

(*k*) first mortgages on immovable property situated in India under any housing or building scheme of a public limited company or a Co-operative Society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force

Provided that the amount of mortgage money does not exceed three-fourths of the value of the property ;

(*l*) loans on first mortgages of immovable property under any housing or building scheme of the Corporation for the benefit of the policy-holders

Provided that the amount of loan does not exceed three-fourths of the value of the property ;

(*m*) loans on life interests, or on policies of life insurance within surrender values issued by the Corporation or by an insurer, the assets and liabilities of whose controlled business have been transferred to and vested in the Corporation or loans to employees of the Corporation for the purposes of purchasing or constructing houses or for the purpose of purchasing motor-cycles, motor-cars or any other conveyances in accordance with any scheme approved by the Corporation ;

(*n*) life interests ;

(*o*) deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934), or with Co operative Societies registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force, the primary object of which is to finance other Co-operative Societies similarly registered ;

(*p*) debentures of, or shares in, Co-operative Societies registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force ;

(*q*) such other investments as the Central Government may, by notification in the official Gazette, declare to be approved investments for the purposes of this section

(2) Notwithstanding anything contained in sub-section (1), the Life Insurance Corporation of India may invest or keep invested any part of its controlled fund otherwise than in an approved investment, if after such investment the total amount of all such investments do not exceed fifteen per cent of the amount of its controlled fund

Provided that the investment is made after securing the unanimous recommendation of its Investment Committee or if no such recommendation can be obtained on a resolution of the Corporation passed by a majority of at least three-fourths of the members present at the meeting

(3) The Corporation shall not, out of the controlled fund, invest or keep invested in the equity shares of any one Company more than thirty per cent of the subscribed equity share capital of the Company except with the prior permission of the Central Government

Provided that nothing in this sub-section shall apply to any investment made by the Corporation in the equity shares of its subsidiary Companies

(4) Where an investment is in partly paid up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentage referred to in sub-section (3)

(5) Where new shares are issued to the existing shareholders by a Company, the existing shares of which are covered by clause (*d*) or clause (*e*) or clause (*f*) of sub-section (1) and of which the Corporation is already a shareholder, the Corporation may subscribe to such new shares

Provided that the proportion of new shares subscribed by it does not exceed the proportion which the paid-up amount on the shares held by it immediately before such subscription bears to the total paid-up capital of the Company at the time of such subscription

(6) If, on application made by the Corporation, the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may, for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt the Corporation from all or any of the provisions of sub-sections (3) and (5)

(7) The Corporation shall not out of the controlled fund invest or keep invested any sum in the shares or debentures of any private limited company except with the prior permission of Central Government

(8) The Central Government may, in the interests of the Corporation or its policy holders, require the Corporation not to invest its funds in any investment specified by it, or where it has any existing investment to realise them within a time to be specified

(9) Without prejudice to the powers given to the Central Government by sub-section (8), nothing contained in this section shall be deemed to require the Corporation to realise any investment made in conformity with the provisions of sub-section (1) which after the making thereof has ceased to be an approved investment within the meaning of this section

(10) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature

Explanation —In this section 'controlled fund' means all the funds of the Corporation appertaining to its life insurance business, capital redemption insurance business and annuity certain business, but does not include any fund or portion thereof in respect of which the Controller is satisfied that it would be in the interest of the Corporation to apply the provisions of this section "

9 In section 28A,—

(*i*) in sub-section (1),—

(*a*) for the words "beginning of the year", the words "beginning of the financial year" shall be substituted ,

(*b*) for the words and figures "as at the 31st day of December, of the preceding year", the words "as at the last day of the preceding financial year" shall be substituted

(*ii*) in sub-section (2),—

(*a*) for the words "quarters ending on the last day of March, June, September and December", the words "half-years ending on the last day of March and September" shall be substituted

(*b*) for the words "close of the quarter", the words "close of the half year" shall be substituted

10 In section 40B,—

(*a*) in sub-section (2),—

(*i*) for the words "calendar year" and "year", the words "financial year" shall be substituted ,

(*ii*) in the proviso, the words "after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F" shall be omitted ,

(*b*) in the *Explanation*, clause (*a*) and sub-clause (*iii*) of clause (*b*) shall be omitted

11 In section 44, for the *Explanation* to sub-section (1), the following *Explanation* shall be substituted, namely,—

"*Explanation* —For the purposes of this sub-section,—

(*i*) 'termination of his agreement,' in relation to an insurance agent, includes termination by reason of his death , and

(*ii*) service of an insurance agent under a chief agent of, or under, an insurer whose life insurance business has been transferred to and vested in the Life Insurance Corporation of India, shall be deemed to be service under the Corporation "

12 In section 102,—

(*i*) in sub-section (1), for the words "where the insurer is a Company, any director, managing agent, manager or other officer of the Company, or where the insurer is a firm, any partner of the firm," the following shall be substituted

"Where the insurer is the Life Insurance Corporation of India, the chairman, any member, managing director, manager, other officer of the Corporation",

(ii) sub-section (2) shall be omitted

13 In section 103,—

(i) in sub-section (1), the words and figures "section 7 or section 98" shall be omitted,

(ii) sub section (3) shall be omitted

14 In section 105, in sub-section (1),—

(i) for the words "Any director, managing agent", the words "The chairman or any managing director or any other member" shall be substituted,

(ii) sub-section (2) shall be omitted.

APPENDIX III

THE EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962

(No 63 of 1962)

[*19th December, 1962*]

An Act to make provisions for the insurance of certain property in India against damage by enemy action during the period of emergency

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows

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CHAPTER I

Preliminary

1 (1) This Act may be called the Emergency Risks (Factories) Insurance Act, 1962

Short title extent and duration

(2) It extends to the whole of India

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for such further period as the Central Government may, by notification in the official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon the expiry of this Act as if it had been repealed by a Central Act

SYNOPSIS

1 *Object*
2 *Extent*
3 *Duration*
4 *Proclamation of Emergency*
5 *Section 6, General Clauses Act, 1897, applicability of*
6 *Court's power*

1 **Object**—In view of the present emergency, it is considered desirable that provision should be made for the insurance of factories and inland vessels against the risk of loss or damage as a result of enemy action

As the degree of risk which may be involved is necessarily uncertain, it will not be possible for the established insurers to cover it in the normal course and the scheme will have to be formulated, brought into force, and operated on behalf of the Central Government The Act seeks to provide for a scheme of Insurance based on premium rates which can be varied within certain limits with reference to the actual nature or extent of the risk as it may exist from time to time [1]

2 Extent —The Act extends to the whole of India

3 Duration —The Act shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962, and for such further period as the Central Government may notify to be the period of emergency for the purposes of this Act

4 Proclamation of Emergency —Article 352 (1) of the Constitution of India provides that if the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect Since the coming into the force of the Constitution the first use of the Emergency provision contained in Art 352 (1) was made by the President on 26th October, 1962, on account of the Chinese aggression in NEFA, a part of the territory of India The Proclamation of Emergency is as follows "In exercise of the powers conferred by clause (1) of Article 352 of the Constitution, I, Sarvapalli Radha Krishnan, President of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by external aggression "[2]

5 Section 6, General Clauses Act, 1897, applicability of —As a general rule after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have further effect If any action has been taken under the expired Act with respect to any matter arising under it during its continuance, the question whether such action could lie or not would depend upon any special provision to the contrary in the temporary Act itself [3] The ordinary rule is that section 6 of the General Clause Act will apply if there is no saving clause in the repealing enactment, or unless a different intention appears [4] Whenever any Act repeals any enactment, unless a different intention appears, the repeal shall not, apart from any other matters, affect any legal proceeding or remedy in respect of any such right, privilege, obligation, etc, and such legal proceeding or remedy may be continued as if the repealing Act has not been passed [5] Ordinarily, a temporary Statute expires automatically by efflux of time and the provisions of section 6 of the General Clauses Act cannot be resorted to in respect of that Statute [6] Moreover, the proceedings which terminate on the expiration of a temporary statute are proceedings, taken under the Statute that had expired [7] This Act being a temporary Statute, provisions in this section have been made applying section 6 of the General Clauses Act so that proceedings taken under the Act may not be invalid after its expiry

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1 *Vide* Statement of Objects and Reasons in the *Gazette of India Extraordinary* Part II Sec 2 No 54 dated 5th December 1962

2 *Vide* G S R 1415 dated 26th October 1962

3 *Tusf Begum* v *Ikbaluda Banu Begum* I L R (1956) Hyd 710 1957 Hyd 6

4 *Chikka Bhai Chelabhai* v *State of Orissa* 1 L R (1955) Cut 529 21 Cut L T 531 1956 Orissa 7

5 *Mandir Dass Dooda* v *Deputy Custodian General India* 64 Punj L R 1024

6 *State of Kerala* v *Paman Nair* I L R (1961) 2 Ker 349 1961 Ker L J 444 1961 Ker L T 465 1962 Ker 78

7 *S Vasudevan* v *S D Mittal* 63 Bom L R 774 (1961 62) 21 F J R 441 1962 Bom 53

6 **Court's power**.—In respect of orders of the executive made under Emergency Defence Regulation the Court can only see that the power exercised is one which falls within the four corners of the powers given by the Legislature and those powers are exercised in good faith Apart from that the Courts cannot inquire into the reasonableness, the policy, the sense or any other aspect of the transaction [1]

2 In this Act, unless the context otherwise requires,— Definitions

(*a*) "buildings" includes foundations, plinths, floors, staircases, tanks, engine and boiler beds, chimneys, flues and boundary walls ,

(*b*) "enemy" means—

(i) any person or country committing external aggression against India ,

(ii) any person belonging to a country committing such aggression ,

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression ,

(iv) any person belonging to such other country ,

(*c*) "factory" means a factory as defined in clause (*m*) of section 2 of the Factories Act, 1948 (63 of 1948) ,

(*d*) "factory buildings" includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of two miles from the main factory building as are in the same ownership or occupation as the factory and are used for the purposes of the factory ,

(*e*) "the Fund" means the Emergency Risks (Factories) Insurance Fund constituted under section 7 ,

(*f*) "insurable value" of property means the value of the property as ascertained for the purposes of insurance under this Act ,

(*g*) "occupier" of a factory has the meaning assigned to it in clause (*n*) of section 2 of the Factories Act, 1948 (63 of 1948) ,

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1 *H C Gupta* v *Mackertich John* 49 C W N 322 and 583 1945 Cal 140 [*Carlton Ltd* v *Commissioners of Works* (1943) 2 All E R 560 followed], *see* also *Lewisham B C* v *Roberts* 1949 K B 608; *Minister of Agriculture and Fisheries* v *Matthews*, 1950 K B 148

(*h*) "owner" of a factory includes, when parts of the property insurable under this Act in relation to the factory are owned by different persons, each such person in respect of the part owned by him ,

(*i*) "property insurable under this Act" means, in relation to any factory, the factory buildings and, except where they are for the time being goods insurable under the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), all plant and machinery in the factory, all materials in the factory for use in the production or transmission of motive power, or in the maintenance of plant and machinery or in the construction or reconstruction or maintenance of factory buildings, and such other plant, machinery or materials as may be specified in the Scheme ,

(*j*) "quarter" means a period of three months commencing on the first day of January, April, July or October ,

(*k*) "the Scheme" means the Emergency Risks (Factories) Insurance Scheme made under this Act ,

(*l*) "emergency risks" means such risks arising from—

(i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy ,

(ii) any explosion or fire which involves any explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with the manufacture, storage or transportation of any such explosives, munitions or other dangerous things ,

(iii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as is described in sub clause (i) or of any such explosion or fire as is described in sub-clause (ii) ,

(iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving risk to property ,

(v) precautionary or preparatory measures involving the doing of work on land and taken under proper

authority in any way in anticipation of enemy action being measures involving risk to property ,

(vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving damage to or diminution of the value of property

SYNOPSIS

1	*Definition clause*	8	*"Occupier' of a factory*
2	*Buildings*	9	*"Owner' of a factory*
3	*Enemy*	10	*"Property insurable under this Act "*
4	*Factory*	11	*"Quarter '*
5	*Factory buildings*	12	*"The Scheme"*
6	*"The Fund"*	13	*"Emergency risks '*
7	*"Insurable value" of property*		

1 Definition clause —In this section two forms of definition clause have been used, viz , "mean' and ' include" Thus the words "buildings", "factory buildings" and "owner' of a factory defined in this section are declared to "include" , while the words "enemy' , ' factory ', "the fund ', "insurable value", "property insurable under this Act", ' quarter', the "scheme' and "emergency risks" defined in this section are declared to "mean" The difference in the two forms of definition clause lies in this that where the word "defined" is declared to ' mean ' so and so, this definition is explanatory and *prima facie* restrictive, while where the word "defined' is declared to "include ' so and so it is extensive [1] Where the Courts are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation [2] The words 'include ' and ' including ' are terms of extension and import addition They add to the subject matter already comprised in the definition [3] But where qualifying words, namely "unless there is anything repugnant in the subject or context', are used (the words used in the section being "unless the context otherwise requires") the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances [4]

2 Buildings —When a vacant site has already a superstructure thereon with the object of putting it to use, it is a building as the land on which the superstructure stands could not exist without relation to the site which afforded the foundation therefor and on which the fabric of the building stood [5] If an open space is merely surrounded by walls but is not attached to any house for use as a part of that house, it cannot be called a

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1 Craies on Statute Law 6th Ed p 212

2 *State of Bombay v Hospital Mazdur Sabha* 1960 S C 610

3 *S M James v Dr Abdul Khair* 1961 Pat 232 *Calico Mills Ltd v State of M P* 1961 Madh Pra 952 *see also Jagdev Singh v Surat Singh* I L R (1962) 2 Punj 300 *Ghanashyam Misra v State of W B* 1959 C L J 15

4 *V F & G Insurance Co v Messrs Fraser & Ross* 1960 S C 971 at pp 974 75 *per* Wanchoo J

5 *Shanmuga Begum v P S Srinivasa Rao* I I R (1962) Andh Pra 1008 (1964) 1 Andh W R 126 1961 Andh Pra 233

part of a building[1] The three reasonable tests to be applied for deciding whether a particular structure is a building, are (i) would an ordinary man think the structure was a building, (ii) has the relevant structure four walls and a roof, and (iii) can any one say that the structure was built[2] Each room in a house may be a 'building'[3]

3 **Enemy** —The word "enemy" is defined to mean (i) a person or (ii) a country When a person, he or she must be committing external aggression against India, or must be belonging to a country committing such aggression or must be one belonging to such other country as may be declared by the Central Government to be assisting the country committing such aggression, when a country, it must be committing external aggression against India or must be such other country as may be declared by the Central Government to be assisting the country committing such aggression This definition has been reproduced from section 2 (c) of the Defence of India Act, 51 of 1962 Where the country to which an appellant belongs becomes, during the pendency of appeal, enemy occupied territory the appellant becomes an "enemy subject"[4] If the area was in the occupation of His Majesty or of a State allied with His Majesty, the fact that it has been overrun by an enemy and is in the military occupation of that enemy for the time being will not render the territory "enemy territory"

4 **Factory** —Clause (m) of section 2 of the Factories Act, 63 of 1948, defines "factory" to mean any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on

but does not include a mine subject to the operation of the Mines Act, 35 of 1952, or a railway running shed

The word 'premises' in the definition of the word "factory" in section 2 (m) of the Factories Act is not confined only to the building of the factory A yard in front of the building is also covered by the definition[6] But where ten or more persons have been working during three shifts on same day but less than ten persons have been working in each shift, it is held that the premises cannot be construed as factory[7] When more than twenty persons are engaged in breaking cashewnuts, the premises is a factory[8] But where the production of cloth is carried on in an industrial school only for the purposes of demonstration and instruction in weaving to the students it is not a factory[9]

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1 *Ramjus Kahar v The State* 1961 Pat L R 86 1961 Pat 409

2 *Nanu and Ram v Gaon Samaj Rura* 1961 A W R (H C) 601 1961 A L J 910

3 *Shuja Khalot Thacker v Commissioner of Dhanbad Municipality* I L R 37 Pat 101 1958 Pat 186

4 *M A Pakiri Mahmad Rowther v Chetan* (1944) 2 M L J 211

5 *Manaisch Film Co v Gemini Pictures* I L R (1944) Mad 124; (1944) 1 M L J 58 1944 Mad 239

6 *State of Kerala v P J Chacko* 1963 Ker L T 1033 *see also Ardeshir H Bhiwandiwala v State of Bombay* 1962 S C 29

7 *S Sankaran Pakkalay Chettiar In re* 1964 Mad 8 *Sally In re*

8 *manufacturers Association v Workers* (1963) 2 Andh

9 *Mulloth* 1960 1 L L J 41 (Lab L J)

5 **Factory buildings** —The expression "factory buildings" is defined to include all buildings contained in the factory and such other buildings within a radius of two miles from its main building but they must be in the same ownership or occupation as the factory and must be used for its purposes Such buildings will include residential buildings for staff and workmen, hospitals and welfare centres Thus a canteen for workers of factory if it be within a radius of two miles from the main factory building would come within this definition [1]

6 **"The Fund"** —This expression is defined to mean the Emergency Risks (Factories) Insurance Fund constituted under section 7 of the Act [2]

7 **"Insurable value" of property** —The expression "insurable value" of property is defined to mean the value of the property as ascertained for the purposes of insurance under this Act [3] Ordinarily, the object of a contract of insurance is to indemnify the assured in respect of the commercial value of the thing lost Insurer is not to compensate him for his feelings but only for the loss so far as it is estimable in money on ordinary business principles [4]

8 **"Occupier" of a factory** —The expression is defined in the same way as it is defined in section 2 (*n*) of the Factories Act, 63 of 1948 Section 2 (*n*) of the said Act defines the "occupier' of a factory to mean the person who has ultimate control over the affairs of the factory and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory

The expression "occupier" as defined in section 2 (*n*) of the Factories Act is not to be equated with "owner" *No doubt, the ultimate control* over a factory must necessarily be with an owner unless the owner has completely transferred that control to another person, whether that was done in a particular case is a question of fact Therefore, the manager of a factory who claims to be an occupier of the factory must produce the necessary material for showing that the owner had in some manner transferred the entire control over the factory to him In the absence of such material a manager cannot be called the "occupier" of the factory [5] The word "occupier' will not include merely an individual An "occupier" of the factory may be a firm or other association of individuals and any one of the individual partners or members thereof [6] The owner of a building under 1-2 licence and employing more than 20 persons for rolling "beedies' is an "occupier" of a factory [7] The word "occupier" in general means a person who occupies the factory either by himself or his agent He may be an owner, he may be a lessee or even a mere licensee, but he must have the right to occupy the property and dictate how it is to be managed [8] Joint owners are all occupiers of the factory [9] The *mukaddam* although he supervises the work of the operatives is not an occupier of the factory [10]

1 See *Lutiman* v *Imperial Industries Ltd* (1955) 3 All E R 481 *see* also *New Taj Mahal Cafe Ltd* v *Inspector of Factories* 1956 Mad 600

2 *See* Notes under section 7 *infra*

3 *See* also Note 10 below

4 *See Re Lgmont's Trusts* (1900) 1 Ch 821 *Aitchison* v *Lohre* (1879) 4 App Cas 755

5 *Donald Mackenzie* v *Chief Inspector of Factories Bihar* 1962 S C 1351

6 *Ram Chandra Sharma* v *State of U P* 1955 A L J 694 (1956) 1 Lab L J 10 1956 All 4

7 *Public Prosecutor* v *Mohd Murthuza Hussain* 1958 Andh Pra 455

8 *Emperor* v *Jamsedji Nusserwanji Modi* 55 Bom 366 33 Bom L R 309 133 I C 826 1931 Bom 308 *South India Corporation (Travancore) Ltd* v *Chief Inspector of Factories* (1957) 2 Lab L J 501

9 *Ashfaq Hussain* v *State* (1959) 2 Lab L J 33 1959 All 555

10 *Emperor* v *Narayan Vithoba Kolar* 29 Nag L R 72 144 I C 693 1933 Nag 100

9 "Owner" of a factory—This expression is defined to include a part owner when parts of the property insurable under this Act in relation to the factory and owned by different persons A part owner cannot be free from the liability imposed on him by this Act on his showing that he knows nothing about the management of the factory and that he has left the whole conduct of his affairs to his co owner or to his manager [1] The fact that the labourers were employed in a ginning factory by the merchants who owned the cotton and not by the factory owner did not make any difference in the matter of prosecution of the owner for infringement of the Factories Act [2]

10 "Property insurable under this Act"—This expression is defined to mean (*i*) the factory buildings as defined in clause (*d*) of section 2 of the Act and (*ii*) all plant and machinery, (*iii*) all materials for use (*a*) in the production or transmission of motive power or (*b*) in the maintenance of plant and machinery or (*c*) in the construction or reconstruction or maintenance of factory building, and (*iv*) such other plant, machinery or materials as may be specified in the scheme as defined in clause (*k*) of section 2 of the Act [3] But when plants and machineries and the materials above referred to are for the time being goods insurable under the Emergency Risks (Goods) Insurance Act, 62 of 1962, they are excluded from the definition

11 "Quarter"—The word "quarter" is defined to mean a period of three months commencing on the first day of January, April, July or October Thus in a calendar year the four quarters will be from January to March, April to June, July to September and October to December A calendar year means the period of twelve months beginning with the first day of January in any year [4]

12 "The scheme"—The expression is defined to mean the Emergency Risks (Factories) Insurance Scheme under this Act The scheme refers to the scheme framed under section 3 of the Act [5]

13 "Emergency risks"—The expression 'emergency risks" is defined to mean all risks arising from (*i*) action (*a*) taken by an enemy or (*b*) in combating an enemy or (*c*) in repelling an imagined attack by an enemy, (*ii*) any explosion or fire or other dangerous things required for the purposes of defence, (*iii*) measures taken to avoid the spreading of or to mitigate the consequences of damage resulting from enemy actions or explosion or fire, (*iv*) precautionary or preparatory measures taken with a view (*a*) preventing or hindering the carrying out of an attack by an enemy or (*b*) denying facilities to an enemy, and (*v*) such measures involving the doing of work on land in anticipation of enemy action Such measures may be taken under proper authority and must involve either risk to property or damage to or diminution of the value of property The same definition is adopted in section 2 (*f*) of the Emergency Risks (Goods) Insurance Act, 62 of 1962

In insurance the word "war" is not used in any technical meaning Thus on the commencement of the China incident it was held that there was a "war" for the purpose of a charter party between China and Japan, irrespective of the fact whether the Government recognised a state of war or whether diplomatic relationships had been broken [6] In an insurance

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1 *See Emperor v Jamshedji Nusserwanji Modi* 1931 Bom 303 *supra*

2 *Lal Government v Nusserwanji* 113 I C 772 : 1933 Nag 234

3 *See* r 3 a 5 of the Emergency Risks (Factories) Insurance Scheme,

4 *See* section 2 (*bb*) Factories Act XLIII of 1948

5 *See* Notes under section 3 *post*

6 *Kawasaki etc v Bantham SS Co* (1939) 2 K B 544

policy the word "war" includes civil war unless the context makes it clear that a different meaning is intended[1] The Irish rebellion was held to amount to "war" within the meaning of insurance policies[2] Even revolutionaries were held to be "King's enemies"[3]

The most important part of insurance is the determination of the risk This is necessary for the adjustment of premium But the insurance under this Act being dependent upon peculiar risks brought about by the Proclamation of Emergency the 'risk' has been defined as covering emergency 'risks' Hence such risks do not extend to 'risks' as are ordinarily understood in insurance contract although the insurance contemplated under the Act is against fortuitous events The risk must be something which happens to it from without,[4] and must not include the inherent vice of the subject matter insured[5]

CHAPTER II

EMERGENCY RISKS (FACTORIES) INSURANCE SCHEME

Emergency Risks (Factories) Insurance Scheme

3 (1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Factories) Insurance Scheme, whereby the Central Government undertakes in relation to factories the liability of insuring property insurable under this Act against emergency risks, to the extent provided by or under this Act

(2) The Scheme may extend to the undertaking by the Central Government in relation to any person in India of the liability of insuring such person against emergency risks in respect of any property insurable under this Act which is not owned by him but in which he has an interest, up to the extent of such interest

(3) The Scheme shall be such as to secure—

(*a*) that the liability of the Central Government as insurer shall not extend to more than eighty per cent of the insurable value of the property insurable ,

(*b*) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government

1 *Pesyaries v Beer* (1949) 82 Ll L R 501 *per* Lord Morton

2 *Curtis v Mallett* (1919) 1 K B 425

3 *Secretary of State for War v Maidland Great Western Railway of Ireland*, (1923) 2 Ir R 102

4 *British Marine v Gaunt* (1921) 2 A C. 41 57

5 See *Taylor v Dunbar* (1869) L R 4 C P 206 , *Boyd v Dubois* (1811) 3 Camp 133 , *Sassoon v Yorkshire Insurance* (1923) 14 Ll L R 167

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided,

(c) that any premium under a policy so issued is payable at a rate not exceeding three per cent per annum of the sum insured as may be specified in the Scheme,

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme

(4) The Scheme may provide—

(a) for undertaking in relation to works in course of construction which, when completed, will become factories, and such plant and machinery appertaining to such works as may be specified in the Scheme, the same liabilities as are undertaken by the Scheme in relation to factories,

(b) that the payments due under a policy of insurance issued under the Scheme, may at the option of the Central Government, take either of the following forms, namely—

(i) payment, within the limits of the liability assumed by the Central Government and in such manner and by such instalments as the Central Government may think fit, of the cost necessary to restore the property as far as practicable to the condition in which it existed before the occurrence of the damage, or

(ii) compensation, within the aforesaid limits, for the loss in value, ascertained on the basis of values and prices ruling at the time at which the policy of insurance was taken out, or at which the loss occurred, whichever is less, suffered by the property as a result of the damage, after due allowance has been made for depreciation during the period of insurance cover,

(c) that payments due under a policy of insurance under the Scheme may be postponed to any time before the expiry of one year from the date on which this Act ceases to be in force, or, subject to payment of interest at the rate of two per cent per annum from the expiry of the said year, to any later date,

(*d*) for making it an express or implied condition of any policy of insurance issued under the Scheme—

(*i*) that the owner or occupier of a factory shall comply with all regulations or instructions made or issued under the authority of Government for safeguarding the property against damage from emergency risks, or

(*ii*) that, where the Central Government exercises its option to pay the cost necessary to restore the property to its original condition, the owner of the factory shall, if so required by the Central Government, reconstruct the factory or remove the factory to and reconstruct it in another locality

(5) Different forms of policies may be specified in the Scheme under sub section (3) in relation to different classes of factories

(6) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act

(7) Every Scheme shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be , so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme

SYNOPSIS

1 *Scope*
2 *"Put into operation a Scheme", sub-section* (1)
3 *Extension of the scheme to any person in India, sub section* (2)
4 *What the scheme shall secure, sub section* (3)
5 *Insurer*
6 *Policy*
7 *Premium*
8 *Indemnity*
9 *What the scheme may provide sub-section* (4)
10 *'Works in course of construction", clause* (*a*) *of sub-section* (*a*)
11 *Forms of payment due under a policy, clause* (*d*) *of sub-section* (4)
12 *Postponement of payments due under a policy, clause* (*c*) *of sub section* (4)
13 *Express or implied conditions, clause* (*d*) *of sub section* (4)
14 *Different forms of policies, sub-section* (5)
15 *Amendment of the scheme, sub-section* (6)
16 *Scheme to be laid before each House of Parliament, sub-section* (7)

1 Scope —The section confers discretion on the Central Government (*a*) to put into operation the Emergency Risks (Factories) Insurance Scheme, (*b*) to extend such scheme to the undertaking by that Government to any person in India with the liability of insuring any property insurable under this Act, and (*c*) to add to, amend or vary any scheme under this Act The section enjoins what the scheme shall secure and may provide The Scheme shall secure (*a*) the liability of the Central Government as insurer to certain percentage of the insurable value of property and such liability to be determined by a policy of insurance issued for a certain period and (*b*) the premium payable under the policy at a certain rate of the sum insured and the amount of any one premium payable The scheme may provide for (*a*) undertakings in course of construction when completed to become factories and the liabilities under this Act are attached to them, (*b*) payments due under a policy of insurance which may take either of the following forms, *viz*, (i) payment within the limits of the liability in such manner and by such instalments as the Central Government may think fit, or (ii) compensation within the aforesaid limits for the loss in value suffered by the property as a result of the damage, (*c*) deferring payments due under a policy of insurance at any time before the expiry of one year from the date on which this Act ceases to be in force or to any later date subject to payment of interest at certain rate, and (*d*) making it an express or implied condition of any policy of insurance issued under the scheme which condition may be that (i) the owner or occupier of a factory must comply with all regulations or instructions for safeguarding the property against damage from emergency risks, or (ii) he shall reconstruct the factory or remove the same to and reconstruct it in another locality on costs being paid by the Central Government for restoration of the property to its original condition

Sub-section (5) of the section confers power to specify in the Scheme different forms of policies in relation to different classes of factories Sub-section (7) of the section enjoins that every scheme has to be laid before each House of Parliament while it is in session for a total period of thirty days and the scheme shall have no effect when both Houses agree that the scheme should not be made but its annulment shall be without prejudice to the validity of anything previously done under the scheme

2 "Put into operation a Scheme," sub sec (1) —By this sub-section discretion has been conferred on the Central Government to put into operation the Emergency Risks (Factories) Insurance Scheme by a notification in the official *Gazette* By virtue of this scheme the Government undertakes the liability of insuring property insurable under the Act against emergency risks as defined in clause (i) of section 2 of the Act to the extent provided by or under this Act in relation to factories Liability as an insurer under this Act is thus cast on the Central Government and section 6 of the Act specifically prohibits any other insurer to issue policies against emergency risks in respect of property insurable under this Act By such notification, the Scheme has been put into operation and it takes effect from the 1st January, 1963 [1]

3 Extension of the scheme to any person in India, sub-section (2) —This sub section confers discretion on the Central Government to extend the scheme so as to undertake its liability of insuring any person in India against emergency risks with regard to any property insurable under this Act of which he is not the owner but in respect of which he has an interest Such liability to insure will be up to the extent of his interest and no further A similar provision is made in sub-para (2) of para 2 of the Emergency Risks (Factories) Insurance Scheme [2]

1 *Vide* S O No 3950/F No 112 (16)-INS/1/ 28-12 1962 62 dated 26-12 1962 *Gazette of India Extraordinary* Part II sect on 3 (ii) dated 2 *Vide* Annexure I

4 **What the scheme shall secure, sub section (3)** —The provisions of sub-section (3) are mandatory as the word "shall" indicates The scheme must secure (i) the extent of the liability of the Central Government as insurer, not to exceed 80 per cent of the insurable value of the property insurable, (ii) the determination of such liability to be made by a person acting on behalf of the Central Government, such determination is to be made by a policy of insurance issued in the form and for a period not exceeding the period specified in the scheme, but where the form of the policy limits the liability and nature of the indemnity and imposes conditions, the indemnity would be subject to those conditions, (iii) premium payable under the policy whose rate must not exceed 3 per cent per annum of the sum insured as may be specified in the scheme, and (iv) the minimum amount of any one premium payable under a policy issued under this Act

5 **Insurer**—The word 'insurer' is defined in section 2 (9) of the Insurance Act (IV of 1938)[1] But the insurer as contemplated under this Act is the Central Government

6 **Policy**—A policy is a formal document in which the contract of insurance is embodied But a policy may be used to describe any contract of insurance, however informal[2]

7 **Premium**—The premium is the price for which the insurer undertakes his liabilities It has been defined as "a price paid adequate to the risk"[3]

8 **Indemnity**—Indemnity is the controlling principle in insurance law as the insurer, in case of insurance of property, contracts to indemnify the assured for what he may actually lose by the happening of the events upon which the insurer's liability is to depend, and in no circumstances is the assured in theory entitled to make a profit of his loss[4] Indemnity implies the placing of a person after a misfortune, in, as nearly as may be possible, the same pecuniary position as that in which he would have been had no misfortune arisen[5]

9 **What the Scheme may provide, sub-section (4)**—The provisions of this sub-section are discretionary as the word "may" so indicates The expression "the scheme may provide" means that the scheme should provide for matters enumerated in clauses (*a*) to (*d*) of this sub-section, but it may also provide for other matters not mentioned in those sub clauses

The scheme may provide (*a*) that the same liabilities as are undertaken by the scheme in relation to factories may be undertaken in relation to works in course of construction which, when completed, will become factories including plant and machinery appertaining to such works, (*b*) that the payments due under a policy may be, at the option of the Central Government, in the form either (i) as payment of the cost necessary to restore the property to its original condition as far as practicable before the occurrence of the damage, or (ii) as compensation for the loss in value suffered by the property as a result of the damage during the period covered by the insurance, (*c*) that the payments due under a policy

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1 *See* section 2 (9) Insurance Act *supra*

2 Re Norwich Equitable Fire (1887) 57 L T 241 *Forsikringsaktieselskabet National* v *Attorney General* (1925) A C 639

3 *Lucena* v *Crawford* (1806) 2 Fos and P N R 269 at p 301 *per* Lawrence J

4 *Castellain* v *Preston* (1883) 11 Q B D 80 886 Brett L J *Mathew* v *Curling*, (1924) 2 A C 180, Younger, L J

5 *Ibid*

may be deferred to any date before the expiry of one year from the date of the expiry of this Act or to any date subsequent thereto subject to payment of interest at the rate of 2 per cent per annum , (*d*) that a policy may be subject to an express or implied condition to the effect (*i*) that the assured under the Act shall comply with all regulations or instructions made or issued under the authority of the Central Government for safeguarding the property against damage from emergency risks , or (*ii*) that he shall, if required by the Central Government, reconstruct the factory or remove it to and reconstruct it in any other locality when the said Government exercises its option to pay the cost as provided in sub-clause (*i*) of clause (*b*) of this section

10 **"Works in course of construction"—Clause (a) of sub-section** (4) —The expression "works in course of construction" relates to a factory in the course of construction but not completed Such an incomplete factory including its plant and machinery comes within the purview of this Act as its insurance is provided in para 5 of the Emergency Risks (Factories) Insurance Scheme[1] But where plant or machinery of such incompleted factory is covered by the Emergency Risks (Goods) Insurance Act (62 of 1962), it need not be insured under this Act Sub-para (2) of para 5 of the said Scheme provides that it is optional with the owner or the intending occupier of an incomplete factory in the process of construction to take out a policy of insurance of the works in course of construction of plant and machinery, but when option is exercised, an application for the policy must be made within one month from the date of commencement of the scheme or one month from the commencement of the works, whichever is later When option is once exercised, it is final and where a policy has been taken out the owner must take out compulsorily policies in subsequent quarters until the factory becomes completed and becomes compulsorily insurable under the Act

11 **Forms of payments due under a policy, clause (b) of sub section** (4) —Under clause (*b*) of sub-section (4), the Central Government as insurer has been given the option to make payments due under a policy of insurance issued under the scheme in either of the two forms, *viz* , (*i*) payment of the cost for the restoration of the property damaged to its original condition as far as practicable, or (*ii*) payment of compensation for the loss suffered by the property as a result of the damage In both the forms such payments must be within the limits of the liability assured by the Central Government In case of item (*i*) above, the payments may be made in such manner and by such instalments as the Central Government may think fit, and in case of item (*ii*) above, the loss in value has to be ascertained on the basis of values and prices ruling at the time when the policy was taken out or when the loss occurred, whichever is less In ascertaining such value due allowance has to be given for depreciation during the period of insurance cover

When the dues under a policy becomes payable on the happening of the event, it is in insurance parlance known as the "claim" Paragraphs 17 and 18 of the Emergency Risks (Factories) Insurance Scheme provide respectively for mode of settlement of claims and statement of claims, verification and payment[2] All claims shall be made in writing in the prescribed form to the Government Agent within ten days after loss or damage, or such

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1 *See* Annexure I 2 *Ibid*

further time as the Government Agent may allow, but the notice of the happening of any loss or damage should be 'forthwith' given in writing [2]

Where a notice is required to be given "forthwith" or "immediately," it means within a reasonable time and without any unjustifiable delay [2] Notice means such notice as "brings home to the mind of a reasonable intelligent and careful recipient such knowledge as fairly, and in business sense, amounts to notice of", the subject matter in question [3] Where a policy lays down a fixed time for giving notice, the obligation on the assured is an absolute one and no excuse will be of any avail [4] Notice need not be given personally by the assured It may be given by an agent [5] or by any person purporting to act on his behalf [6]

12 Postponement of payments due under a policy, clause (c) of sub section (4) —Clause (*c*) of this sub section permits postponement of payments due under a policy of insurance under the scheme made under this Act and such postponement may be made to any time before the expiry of one year from the date on which this Act expires without payment of any interest but such payment may also be postponed to a later date from the expiry of the date of this Act provided interest at the rate of two per cent per annum is paid

13 Express or implied condition, clause (d) of sub section (4) — Clause (*d*) of this sub section enjoins that the scheme may provide for making it an express or implied condition of any policy of insurance under it Such condition may be either that the assured, i e , the owner or occupier of a factory shall comply with all regulations or instructions issued under the authority of Government for safeguarding the property against damage from emergency risks or that he shall reconstruct the factory or remove the factory to and reconstruct it in another locality when required by the Central Government so to do in case it exercises its option to pay the cost necessary to restore the property to its original condition as provided in clause (*b*) (i) of this sub-section

Breach of a condition in a policy gives the aggrieved party an excuse for non-performance of his obligation to the other or where he does not exercise his right, he has a right of action for damages But where an insurer affirms the policy in spite of a breach of condition, his liability does not cease in the event of a loss [7] It is a question of construction whether or not a term in a policy is simply declaratory of, or intended to alter, the general legal position [8]

But conditions in policies and collateral stipulations should be distinguished as every stipulation in the policy is not necessarily a condition The guiding principle is that if the insurers want a clause to be a condition

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1 *See* para 18 of the Scheme Annexure I

2 *Williams v Lancashire and Yorkshire Accident* (1902) 51 W R 222 *Rokes v Amazon Insurance* (1879) 34 Am Rep 323 *see* also *Trask v State Fire* (1858) 29 Penn 198 *Edwards v Lycoming County Mutual* (1874) 75 Penn 378 *Griffey v New York Central* (1865) 53 Am Rep 202

3 *Greenwood v Leather Shod Wheel Co* , (1900) 1 Ch 421 436 *per* Lindley M R

4 *Cassel v Lancashire and Yorkshire Accident* (1885) 1 T L R 495 *Tautman v Mutual Fire of Clinton* (1867) 27 U C Q B 100 , *Vuerli v Administratrix v Mo or Union Ins Co* (1925) 2 K B 137

5 *Davies v National Fire of New Zealand*, (1891) A C 485 (P C)

6 *Patton v Employers Liability Assurance* (1887) 20 L R Ir 93

7 *West v National Motor* (1955) 1 W L R 343 (1955) 1 All E R 800

8 See *McCormick v National Motor Insurance* (1934) 50 T L R 528 where Scrutton L J treats a condition as declaratory of the law while Greer I J treats it other wise *see* also *Hain S S Co v Tate and Lyle* (1936) 52 T L R 617

precedent, they must say so clearly[1] A term of keeping proper books of account[2] or notice must be given within seven days[3] was held to be not a condition precedent to recovery

14 **Different forms of policies, sub section (5)**—This sub section enjoins that the scheme specified in sub section (1) of this section may specify different forms of policies referred to in sub-section (3) of this section in relation to different classes of factories, that is to say policies issued under this Act may be of different forms in respect of different classes of factories Paragraph 10 of the Scheme provides hat every policy of insurance issued under it shall be in the form set out in the Second Schedule, and shall be in respect of the period ending on the last day of the quarter for which the policy is issued Paragraph 11 thereof provides that each factory is to be covered by one policy but where additions are made to the property insurable under this Act, supplementary policy has to be taken out in respect of such additions[4] The different forms of policies as mentioned in the scheme may be (*a*) compulsory policy of insurance, such policy relates to completed factories,[5] (*b*) optional policy of insurance, it relates to works in course of construction which, when completed, will become factories but when such a policy is taken out it shall be compulsory for the owner to take out policies of insurance in subsequent quarters until the factory is completed and becomes compulsorily insurable,[6] and (*c*) overlapping policies that is, where insurance under the scheme has been taken out separately by the owner and the occupier of a factory in respect of the same property, in such a case the policy taken out by either of them may be cancelled on their joint application and the premium may be refunded[7]

15 **Amendment of the scheme, sub section (6)**—This sub section confers discretion on the Central Government to add to, amend or vary any scheme made under this Act by notification in the official Gazette Thus the Scheme put into operation by notification S O 3945 dated 26th December, 1962,[8] may be amended by way of additions or variations by the Central Government by notification in the official Gazette The Central Government has exercised the powers conferred by this sub section in several cases[9]

16 **The scheme to be laid before each House of Parliament**—The scheme put into operation by virtue of sub-section (1) of this section is a sort of sub rdinate legislation and its validity is considered from two aspects *viz* (*a*) the control exercised over them by Parliament and (*b*) their subjection to the rule of law With regard to the control of statutory instruments by the Court, Lord Green, M R, observed 'All that the Court can do is to see that the power which it is claimed to exercise is one which falls within the four corners of the powers given by the Legislature and to see that the powers are exercised in good faith Apart from that the Courts have no power at all to enquire into the reasonableness the policy, the

1 *Jones and James* v *Provincial* (1929) 46 T L R 71

2 Re Bradley and Ess x Accident (1912) 1 K B 415

3 *Stoneham Ocean Railway and General* (1887) 13 Q B D 237

4 *See* Annexure I

5 *See* para 12 of the Scheme Annexure I

6 *See* para 5 (2) of the Scheme Annexure I

7 *See* para 15 of the Scheme Annexure I

8 *See* Annexure I

9 *See* S O 886 dated 19th March 1963 S O 1799 dated 29th June 1963 and S O 2733 dated 21st September 1963 S O 3602 dated 28th December 1963 S O 1114 dated 28th March 1964 S O 2190 dated 23rd June 1964 S O 3454 dated 21st September, 1964

ense or any other aspect of the transaction "[1] With regard to the control f such instruments by Parliament the provisions contained in this sub section re "most effective" as the Parliament retains the powers to modify or to nnul them The scheme under the Act shall be of no effect unless both Houses agree to it [2]

Employment of agents by the Central Government

4 The Central Government may, by notification in the Official *Gazette*, employ or authorise the employment of any person to act as its agent for any of the purposes of this Act, and may pay to the person so employed such remuneration as it may think fit

SYNOPSIS

1 *Summary*
2 *Employment of agent*
3 *Remuneration of agent*
4 *Duties of agent*

1 Summary—This section confers powers on the Central Government to employ or authorise the employment of any person to act as its agent for any of the purposes of this Act Such Government may pay to the agent such remuneration as it may think fit Such employment of agent or authorising the employment of any person to act as its agent should be made by notification in the Official *Gazette*

2 Employment of agent—Ordinarily an agent is a person employed to do any act for another or to represent another in dealings with third person [3] An insurance agent may be defined to be "one whose business it is to represent an insurance company, for the purpose of obtaining persons to insure with that company he being rewarded by a commission paid by the company he represents [4] But the insurance under this Act is a statutory one and the Central Government having constituted itself the insurer under the Act, it is the Central Government that can employ an agent to act on its behalf and for any of the purposes of this Act Such appointment of the agent has to be made by a notification in the Official *Gazette*

3 Remuneration—An agent is entitled to his remuneration for the performance of his act and such remuneration may be settled by contract between the principal and the agent The agent appointed under this section is also entitled to his remuneration which the Central Government may pay to him according to its discretion Ordinarily the remuneration of insurance agents takes the form of a commission. But appointment of agent on salary basis is not uncommon An agent who was employed to do a particular thing cannot claim his remuneration for doing something similar but not the precise thing [5]

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1 *Carltona Ltd v Commissioners of Works* (1943) 2 All E R 560 564 *Lewisham B C v Roberts* (1949) 2 K B 608 *Minister of Agriculture and Fisheries v Matthews* (1950) K B 148

2 See Chapter on Delegated Legislation in Cra es on Sa e Law Ben Edn

3 See section 182 Indian Contract Act, *Pierce v Mus Bennett & Co* -8 Bom [illegible]

4 See Ency Encyclopaedia & Legal [illegible] III p 179

5 *Tamaya v Miller*, 58 L T [illegible]

4 Duties of agents —It is the duty of an insurance agent to insert in a policy all the clauses usually inserted in an insurance of a particular type [1] He is to use due diligence to procure a settlement and payment of a loss arising under a policy he retains in his hands[2] or to perform what has been undertaken, that is, to effect an insurance within a reasonable time [3] On his failing to have the insurance effected in consonance with the instruction, he is to give notice of that fact to his principal [4]

An agent employed under this section has certain statutory duties to perform, namely, (*i*) he shall have to issue a policy of insurance as soon as possible after the receipt of the application for insurance, (*ii*) he shall scrutinise the application and if any defect be found either in the application or in the challan accompanying the application, he shall return the application to the applicant for re submission but where the chalan is in order but the application is defective, he shall retain the challan and return the application for re submission, (*iii*) he has power to issue a policy in part where the challan falls short of the premium due and direct the applicant to make a further application in respect of the balance remaining uncovered, (*iv*) he has the discretion to postpone the issue of a policy when it transpires that a policy of insurance for the same property or any part thereof against fire, accident or marine risks has been taken out with any other insurer, until enquiries from that insurer have been made, [5] (*v*) he has to receive all claims and verify them as to the form and period of time within which such claims have been submitted, (*vi*) he has to have the loss or damage assessed by a loss assessor recognised by the Central Government or by any person deputed for the purpose under the direction of the Central Government, (*vii*) he has to verify the report of the loss assessor or of the person appointed for the purpose, and (*viii*) he has to forward the loss assessor's report with his remarks and recommendation to the Government of India in the Ministry of Finance (Department of Economic Affairs)

Duty of owner of factory to insure against emergency risks

5 (1) While the Scheme is in operation, every owner of a factory, except a factory belonging to Government or a factory exempted under section 15 from the provisions of this Act, shall, by such date as may be specified in this behalf by the Central Government by notification in the Official *Gazette*, or, in respect of premises becoming a factory or property becoming property insurable under this Act after that date or in a case to which sub section (2) refers, before the commencement of the quarter next following that in which the premises become a factory or the property becomes insurable under this Act, or as the case may be, in which the reconstruction of the factory is completed, take out a policy of insurance against emergency risks issued in accordance with the Scheme, whereby, he is insured in respect of all property insurable under this Act, which appertains to the factory for a sum not less than the insurable value of such property

Provided that where the owner of the factory is not himself the occupier of the factory, the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-

1 *Mellows v Barker* (1815) 4 Camp 1.0
2 *Bonsfield v Cresswell* (1810) 2 Camp 515
3 *Turpin v Bilton* (1843) 5 M & G 455
4 *Callander v Oelrichs* 5 Barg N C 58
5 *See* para 9 of the Scheme Annexure I

section, himself take out the policy, and in such a case the occupier shall be deemed to act as the agent of the owner and shall be entitled to receive from the owner all sums paid as premiums on the policy

(2) The obligation imposed by sub-section (1) includes, when the owner of the factory is required by the Central Government to reconstruct a factory which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed factory.

(3) When a factory in respect of which a policy of insurance against emergency risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of the factory, the policy may be transferred to the new owner or occupier and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him

(4) Whoever contravenes the provisions of sub section (1) or the *proviso* thereto, or, having taken out a policy of insurance as required by that sub section, fails to pay any instalment of premium thereon which is subsequently due, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues, and such punishment shall be without prejudice to any other penalty or liability incurred in consequence of such contravention or failure

(5) Where any offence under sub-section (4) is tried by a Presidency Magistrate or a Magistrate of the first class, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), the Magistrate trying the offence may pass any sentence authorised by that sub section.

SYNOPSIS

1 *Summary*
2 *Duty of owner of factory to insure, sub section (1)*
3 *When the owner is not the occupier, proviso*
4 *Obligation to take out additional policy, sub section (2)*
5 *Transfer of factory, effect on policy, sub section (3)*
6 *Contravention and penalties, sub section (4)*
7 *Offences triable by Magistrates, sub section (5)*
8 *Punishment*

1 **Summary**—Sub-section (1) of this section imposes duty owner of a factory or premises becoming a factory or property one insurable under this Act to take out a policy of insuranc

4 Obligation to take out additional policy, sub section (2) — Sub-section (2) makes it obligatory on the owner of the factory who is required by the Central Government to reconstruct the same on account of damage suffered to take out an additional policy of insurance in respect of the reconstructed factory as required by sub section (1) of this section

5 Transfer of factory, effect on policy, sub-section (3)—Sub section (3) provides for cases where the ownership of a factory, during the currency of a policy of insurance under this Act, is transferred from one owner to another or where there is a change of its occupier In such cases the policy in favour of the transferor owner or the old occupier may be transferred to the transferee owner or the new occupier, as the case may be, and the effect of such transfer of policy is that the transferee owner or the new occupier, as the case may be, succeeds to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him

Ordinarily a policy of insurance can only be assigned with the consent of the insurer, for it is a personal one between him and the insured [1] An assignment should take place contemporaneously with the transfer of the insured's interest in the subject-matter insured, otherwise the policy would become void for lack of insurable interest [2] But what is contemplated under this sub section is that the transfer of a policy is a statutory one and it gives validity to the assignment on the transfer of ownership of the factory or change of its occupier by placing the assignee in the place of the original insured, with all his rights and duties under this Act

6 Contravention and penalties, sub-section (4) —This sub-section provides penalty for contravening the provisions of sub section (1) of this section and also for failure to pay any instalment of premium on a policy of insurance which is subsequently due The penalty provided may extend to two thousand rupees with a further fine extending to one thousand rupees for every day after the first on which the contravention or failure continues But the offender is also liable to any other penalty or liability incurred in consequence of such contravention or failure

In the case of an offence contemplated under this sub section, the fact that the accused is entirely innocent of any intention to injure the Government during the period of emergency is no ground for not imposing punishment at all [3] If is sub section being penal it must be construed strictly "If there is a reasonable interpretation which would avoid the penalty", that construction should be adopted [4] A mischief should not be extended and in case of ambiguity, a penalty should also not be enlarged [5] The strictest construction should be placed on the prohibitory and penal sections of an Act [6] In construing a penal statute it is always a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred [7] In penal statutes if two interpretations are possible, the one in favour of the accused should be accepted [8]

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1 *Rayner* v *Preston* (1881) 18 Ch D 1

2 *Lynch* v *Dolzell* (1729) 4 Bro P C 431

3 *Thammana Ram Iingeyya In re* I L R (1943) Mad 2 0 (1942) 2 M L J 357 44 Cr L J 139 1942 Mad 723

4 *Tuck* v *Priester* (1887) 19 Q B D 629 638, *per* Lord Esher M R followed in *Hildesheimer* v *Faulkner* (1901) 2 Ch 552

5 *Pratabmull Rameswar* v *Meer ek Chard Durga Prasad* 64 C W N 592

6 *Brahmanath Singh* v *Chandrakali Puar* 1961 Pat 79

7 *M V Joshi* v *M U Shimpa* 1961 S C 1494 (1961) 2 Cr L J 695

8 *R S Sharma* v *State* I L R (1961) 2 All 507 1961 A L J 624 (1961) 1 Cr L J 251

emergency risks for a sum not less than the insurable value of such property It exempts a factory belonging to Government or one exempted under section 15 of this Act The proviso to this sub-section imposes an obligation on the occupier to take out a policy under this Act when the owner has not done so

Sub-section (2) imposes an obligation on the owner to take out an additional policy of insurance when a factory has been reconstructed under the directions of the Central Government

Sub section (3) provides that on transfer of ownership of a factory from one to another or on a change of occupier, the policy may be transferred to the new owner or occupier, as the case may be

Sub section (4) provides penalties for contravening the provisions of sub-section (1) of this section and for failure to pay any instalment of premium subsequently due thereon, and sub-section (5) provides trial of offences under sub-section (4) and the sentence that the trying Magistrate may inflict

2 Duty of owner of factory to insure, sub section (1)—During the operation of the Emergency Risks (Factories) Insurance Scheme,[1] every owner of a factory except a Government factory or one exempted under section 15 of this Act, must take out a policy of insurance against emergency risks Such policy must cover all property insurable under this Act which appertains to the factory and it must be for a sum not less than the insurable value of such property This duty of insuring on the part of the owner also extends to premises becoming a factory or one reconstructed or property becoming insurable under this Act The policy in respect of existing factory must be taken by such date as may be specified in this behalf by the Central Government by notification in the Official *Gazette* and after that date in respect of premises becoming factory, and property becoming insurable property but in respect of reconstructed factory such policy must be taken before the commencement of the quarter next following that in which the reconstruction of the factory is completed

3 When the owner is not the occupier of the factory, proviso—The proviso to sub section (1) provides by imposing obligation on the occupier of a factory who is not its owner, the latter having not already taken out a policy, to take out a policy of insurance in accordance with this Act When the occupier has taken out such a policy, he shall be considered to all intents and purposes to act as the agent of the owner and he shall have the right to receive from the owner all sums paid as premiums on the policy

Anyone who undertakes to make, or whose duty it is to make, a contract of insurance for the assured is his agent[2] Such an agent although he acts gratuitously[3] is under a duty to the assured to act carefully[4] and is liable to him in damages for negligence[5] He must exercise proper care and skill in carrying out the assured's instructions[6] and he cannot excuse himself from accepting a policy that gives insufficient cover by saying that the assured ought to have examined it[7]

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1 The Scheme came into operation with effect from 1st January 1963 *see Gazette of India Extraordinary* Part II Section 3 (ii) dated 28th December 1962

2 As to their powers *see Xenos v Wickham* (1867) L R 2 H L 296

3 *Wilkinson v Coverdale*, (1793) 1 Esp 74

4 *Levy v Merchants Marine* (1885) 52 L T 263

5 *Park v Hammond* (1816) 6 Taunt 495

6 *Lyons v Bentley* (1946) 77 Ll L R 335, *General Accident v Minet* (1943) 74 Ll L R 1

7 *Dickson v Devitt* (1916) 86 L J K B 315

4 Obligation to take out additional policy, sub section (2) — Sub-section (2) makes it obligatory on the owner of the factory who is required by the Central Government to reconstruct the same on account of damage suffered to take out an additional policy of insurance in respect of the reconstructed factory as required by sub section (1) of this section

5 Transfer of factory, effect on policy, sub-section (3)—Sub section (3) provides for cases where the ownership of a factory, during the currency of a policy of insurance under this Act, is transferred from one owner to another or where there is a change of its occupier In such cases the policy in favour of the transferor owner or the old occupier may be transferred to the transferee owner or the new occupier, as the case may be, and the effect of such transfer of policy is that the transferee owner or the new occupier, as the case may be, succeeds to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him

Ordinarily a policy of insurance can only be assigned with the consent of the insurer, for it is a personal one between him and the insured [1] An assignment should take place contemporaneously with the transfer of the insured's interest in the subject-matter insured, otherwise the policy would become void for lack of insurable interest [2] But what is contemplated under this sub-section is that the transfer of a policy is a statutory one and it gives validity to the assignment on the transfer of ownership of the factory or change of its occupier by placing the assignee in the place of the original insured, with all his rights and duties under this Act

6 Contravention and penalties, sub-section (4) —This sub-section provides penalty for contravening the provisions of sub section (1) of this section and also for failure to pay any instalment of premium on a policy of insurance which is subsequently due The penalty provided may extend to two thousand rupees with a further fine extending to one thousand rupees for every day after the first on which the contravention or failure continues But the offender is also liable to any other penalty or liability incurred in consequence of such contravention or failure

In the case of an offence contemplated under this sub section, the fact that the accused is entirely innocent of any intention to injure the Government during the period of emergency is no ground for not imposing punishment at all [3] This sub section being penal it must be construed strictly "If there is a reasonable interpretation which would avoid the penalty", that construction should be adopted [4] A mischief should not be extended and in case of ambiguity, a penalty should also not be enlarged [5] The strictest construction should be placed on the prohibitory and penal sections of an Act [6] In construing a penal statute it is always a cardinal principle that in case of doubt, the construction favourable to the subject should be preferred [7] In penal statutes if two interpretations are possible, the one in favour of the accused should be accepted [8]

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1 *Rayner* v *Preston* (1881) 18 Ch D 1

2 *Lynch* v *Dalzell* (1729) 4 Bro P C 431

3 *Thammana Ram Iingayya In re* I L R (1943) Mad 210 (1942) 2 M L J 357 44 Cr L J 139 1942 Mad 723

4 *Tuck* v *Priester* (1887) 19 Q B D 629 638 *per* Lord Fisher M R followed in *Hildesheimer* v *Faulkner* (1901) 2 Ch 552

5 *Pratabmull Rameswar* v *Martek Chand Durga Prasad* 64 C W N 592

6 *Brahmanath Singh* v *Chandrakala Kuer* 1961 Pat 79

7 *M V Joshi* v *M U Shimpi* 1961 S C 1494 (1961) 2 Cr L J 695

8 *R S Sharm* v *State* I L R (1961) 2 All 507 1961 A L J 424 (1962) 1 Cr L J 251

The contraventions of the provisions of sub-section (1) of this section and default in the payment of premium which is subsequently due have been made continuing offences under this sub-section and an additional daily fine has been provided so long as the contravention or failure continues Ordinarily, an imposition of daily fine is not warranted by law as it would be an adjudication of a future offence which has not been committed,[1] but where the statute prescribes that default on every subsequent day would be an offence for which a fine can be imposed, no fresh order is necessary to authorize the imposition of a daily fine [2]

7 **Offences triable by Magistrates, sub-section (5)**—This sub-section empowers a Presidency Magistrate or a Magistrate of the first class when trying any offence under sub-section (4) to pass in his discretion any sentence authorised by sub section (4), that is, although a Presidency Magistrate or a Magistrate of the first class can pass a sentence of fine not exceeding two thousand rupees under the Code of Criminal Procedure, 1898 (V of 1898), he is authorised by sub-section (4) to pass a sentence of a further fine of one thousand rupees, *i e*, the total fine he can impose may extend to three thousand rupees in excess of his powers under the said Code

8 **Punishment**—Punishments which can be imposed under sub-section (4) of this section are, (*i*) fine extending to two thousand rupees, (*ii*) a further fine extending to one thousand rupees for every day after the first on which the contravention or failure continues, and (*iii*) other penalty or liability incurred in consequence of such contravention or failure [3]

The object of punishment is the prevention of crime and every punishment is intended to have a double effect, namely, to prevent the person who has committed a crime from repeating the act or omission, and to prevent other members of the community from committing similar crimes [4]

Restriction on carrying on certain insurance business

6 (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring factories in India against emergency risks in respect of property insurable under this Act

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues

SYNOPSIS

1 *Summary*

2 *No person to carry on business of insuring factories, sub section* (1)

3 *Contravention and penalty, sub-section* (2

1 *Ram Krishna v Mahendra Nath* 27 Cal 565 *Emperor v Nasir Ahmad* 24 All 309 *In re Timbaji Tulsi Ram* 22 Bom 766

2 *Ram Lal Seth v Corporation of Calcutta* 7 C W N 853 *see* also *Trilokchand v C N Srivastava* 1961 All 88 (1961) 1 Cr L J 202 *see* also Banerjee B N Criminal Pleadings 1961 Edn p 167

3 *See* section 11 and notes thereunder

4 Halsbury's Laws of England Vol X p 487 Simonds Edition for a fuller discussion on the subject *see* Banerjee B N : Criminal Pleadings, 1964 pp 163-164

The contraventions of the provisions of sub section (1) of this section and default in the payment of premium which is subsequently due have been made continuing offences under this sub-section and an additional daily fine has been provided so long as the contravention or failure continues Ordinarily, an imposition of daily fine is not warranted by law as it would be an adjudication of a future offence which has not been committed,[1] but where the statute prescribes that default on every subsequent day would be an offence for which a fine can be imposed, no fresh order is necessary to authorize the imposition of a daily fine[2]

7 **Offences triable by Magistrates, sub-section** (5)—This sub-section empowers a Presidency Magistrate or a Magistrate of the first class when trying any offence under sub section (4) to pass in his discretion any sentence authorised by sub section (4), that is, although a Presidency Magistrate or a Magistrate of the first class can pass a sentence of fine not exceeding two thousand rupees under the Code of Criminal Procedure, 1898 (V of 1898), he is authorised by sub-section (4) to pass a sentence of a further fine of one thousand rupees, *i e*, the total fine he can impose may extend to three thousand rupees in excess of his powers under the said Code

8 **Punishment**—Punishments which can be imposed under sub-section (4) of this section are, (*i*) fine extending to two thousand rupees, (*ii*) a further fine extending to one thousand rupees for every day after the first on which the contravention or failure continues, and (*iii*) other penalty or liability incurred in consequence of such contravention or failure[3]

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6 (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring factories in India against emergency risks in respect of property insurable under this Act

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues

SYNOPSIS

1 *Summary*

2 *No person to carry on business of insuring factories, sub-section* (1)

3 *Contravention and penalty, sub-section* (2

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1 *Ram Krishna v Mahadeo Nath* 27 Cal 565 *Emperor v Nazir Ahmad* 24 All 309 *In re Timbaji Tulsi Ram* 22 Bom 766

2 *Nasim Lal Seth v Corporation of Calcutta* 7 C W N 753 *see* also *Tricklebank v Cox* [1937] 1 All E R 222

Cr L J 202 *see* also Banerjee B N Criminal Pleadings 1961 Edn p 167

3 *See* section 11 and notes thereunder

4 Halsbury's Laws of England Vol X p 487 Simond's Edition for a fuller discussion on the subject *see* Banerjee B N Criminal Pleadings, 1964 pp 163-164

1 Summary —Sub section (1) of this section restricts the carrying on of the business of insuring factories in India against emergency risks in respect of property insurable under this Act Such business can only be carried on by the Central Government and by no other insurer Sub-section (2) makes the contravention of sub-section (1) penal and its contravention is visited with a fine which may extend to five thousand rupees and with a further fine extending to one thousand rupees for every day of the default

2 No person to carry on business of insuring factories, sub section (1) —The provisions of sub section (1) are mandatory It prohibits the carrying on of the business of insuring factories in India against emergency risks in respect of property insurable under this Act after the date on which the Emergency Risks (Factories) Insurance Scheme is put into operation, *i e*, after 1st January, 1963 It is the person authorised by the Central Government as its agent who can issue policies in pursuance of the said Scheme No other person has any such power to issue policies against emergency risks nor has he any power to carry on the said business of insurance In this regard the Central Government by virtue of the powers conferred on it under Section 4 of this Act, has employed the Oriental Fire and General Insurance Company, Ltd , Bombay, to act as its agents for the purposes of this Act [1]

Ordinarily an insurer as defined in Section 2 (9) of the Insurance Act (IV of 1938) can carry on insurance business in India but such insurer as defined in the said Act cannot carry on the business of insuring factories in India against emergency risks in respect of property insurable under this Act [2] Insurance business has been grouped into different classes under the said Act, such as, (*i*) fire insurance business, (*ii*) general insurance business, (*iii*) life insurance, (*iv*) marine insurance business, and (*v*) miscellaneous insurance business [3]

3 Contravention and penalty, sub section (2) —Sub section (2) of this section is a penal one and it provides that anyone contravening the provisions of sub section (1) *i e*, carrying on the business of insuring factories in India against emergency risks in respect of property insurable under this Act, shall be punishable with fine extending to five thousand rupees and with a further fine extending to one thousand rupees for every day after the first on which the contravention continues

This sub-section suffers from certain defect as it is not indicated who can inflict the punishment if any contravention of the provisions of sub section (1) is made Presumably a Presidency Magistrate or a Magistrate of the first class cannot try the offence for such contravention, as he has powers to pass a sentence of fine to the maximum limit of two thousand rupees under the Code of Criminal Procedure, 1898 The provision as is contained in sub-section (5) of section 5 does not find any place in this sub section This sub section as it stands now, provides the punishment contemplated under it, namely, of inflicting the maximum, *i e* five thousand rupees, can be imposed by the High Court, the Sessions Judge, the Additional Sessions Judge or the Assistant Sessions Judge or Court of District Magistrate Presidency Magistrate or Magistrate of the first class specially empowered under section 30 of the Code of Criminal Procedure But the imposition of fine being discretionary, the Court has power to impose a

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1 S O 3952 F No 11 (17) INS/I/62 *Gazette of India Extraordinary* Part II Section 3 (*ii*) dated 28th December 1962

2 For a fuller discussion on the subject of insurer, *see* notes under section 2 (9) of the Insurance Act *supra*

3 *See* notes on those heads under section 2 (LV) (6 B) (11) (13 A) and (13-B) of the Insurance Act *supra*

nominal fine as there is no minimum prescribed for it[1] So where a maximum fine under this sub section is called for, it is doubtful whether a Presidency Magistrate or Magistrate of the first class, unless he is specially empowered under section 30 of the Code of Criminal Procedure, 1898, can pass a sentence of fine exceeding two thousand rupees

Section 29 of the Code of Criminal Procedure empowers the High Court, where no Court is mentioned for any offence under any law other than the Indian Penal Code, to try such offences but where any Court is mentioned in such law, it may be tried by such Court[2]

Emergency Risks (Factories) Insurance Fund

7, (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year, to a fund to be called the Emergency Risks (Factories) Insurance Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on composition of offences under section 13 or by way of expenses or compensation awarded by a Court, under section 545 of the Code of Criminal Procedure, 1898 (V of 1898), out of any fine imposed in any prosecution under this Act

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme, or for payments by the Central Government under section 10, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit

(5) The Central Government shall prepare in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund

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1 See *State of Mysore* v *Basappa* 1953 Mys 75 : 1953 Cr L J 1014 *Emperor* v *Kewal Chand* 1915 All 207 *Adamji Umar Dalal* v *State of Bombay* 1952 S C R 172 1952 S C 14 1953 Cr L J 542.

2 *See* Sohoni's Criminal Procedure Code Vol I 15th Edn pp 91 93

SYNOPSIS

1 *Summary*
2 *Fund, its constitution, sub section (1)*
3 *Payment out of the Fund, sub section (2)*
4 *Fund when inadequate, sub section (3)*
5 *Fund when in excess, sub section (4)*
6 *Account of the Fund, its publication, sub section (5)*

1 Summary —Sub-section (1) provides the manner by which the Central Government may constitute the Emergency Risks (Factories) Insurance Fund Sub-section (2) provides for the payment to be made out of the said Fund constituted under sub section (1) of this section Sub section (3) provides for the contingency when the Fund will be inadequate to make the payments required to be made under sub-section (2) Sub-section (4) provides for the disposal of the excess remaining in the Fund after making the required payments Sub-section (5) imposes a duty on the Central Government to prepare and publish an account of all receipts and payments under the said Fund annually or at such shorter intervals as may be specified in the Scheme

2 Fund, its constitution, sub section (1) —By this sub section the Central Government has been given the discretion to transfer such sum as may be considered necessary to a fund to be called the Emergency Risks (Factories) Insurance Fund Before such transfer due appropriation is to be made by Parliament by law in this behalf The sums that may be transferred in each financial year must not exceed the sums (i) received by way of insurance premiums under the Emergency Risks (Factories) Insurance Scheme, or (ii) received by way of payments made on composition of offences under section 13 of this Act, or (iii) received by way of expenses or compensation awarded by a Court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act

3 Payment out of the fund, sub section (2) —The provisions of this section are mandatory Out of the Fund constituted under sub-section (1), the following payments have to be made, *viz*, (i) all sums required for the discharge of the Central Government's liabilities under the Emergency Risks (Factories) Insurance Scheme, *i e*, liabilities to the extent of 80 per cent of the insurable value of the property insurable under this Act, (ii) all sums required for payment by the Central Government towards cost of removal and reconstruction of factory as provided under section 10 of this Act, and (iii) all sums required for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Emergency Risks (Factories) Insurance Scheme [1]

4 Fund when inadequate, sub section (3) —Sub section (3) makes provisions for a contingency when the sum standing to the credit of this Fund is inadequate for the sum required for making any payment out of the said Fund Such inadequacy of the Fund is replenished by paying into the Fund an amount equal to the deficiency and the payment to the Fund should be treated as an advance out of the Consolidated Fund of India But before such payment is made as an advance, there should be due appropriation made by the Parliament by law

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1 Compare this fund with the Life Insurance Fund *see* section 10 of the Insurance Act 1938 and Notes thereunder

5 **Fund when in excess, sub section (4)**—Sub-section (4) provides that when at any time the amount standing to the credit of the Fund is in excess of the sum which is likely to be required for the making of payments out of the Fund, such excess amount shall be disposed of in such manner as the Central Government may think fit But before such disposal of the excess amount, the Central Government must form an opinion that at the relevant time the amount standing to the credit of the Fund exceeds the sum which is likely to be required for the making of payments out of the Fund The combined effect of sub-sections (3) and (4) makes the Fund under the Emergency Risks (Factories) Insurance Scheme a more or less the policy holders' trust fund, so far as it is required to make the payments on the happening of the events insured against under this Act But when the Fund happens to be in excess, the policy holders under the Act cannot put forward any claim to it by way of bonus or otherwise as such excess amount is absolutely under the control of the Central Government and the latter has power to dispose of the said excess amount as it thinks expedient in the circumstances of the case [1]

6 **Account of the Fund, its publication, sub section (5)**—This sub section imposes a duty on the Central Government to publish an account of the receipts and payments in and out of the said Fund Such publication may be made yearly or at such shorter intervals as may be specified in the Scheme The form and manner of the account should be as also specified therein

CHAPTER III

Miscellaneous

Power of Central Government to obtain information

8 (1) Any person authorised in this behalf by the Central Government may, for the purpose of a certaining whether or not the owner or occupier of any property required to be insured under this Act has taken out a policy of insurance as required by this Act in respect of such property or for the purpose of investigating the insurable value of any property insured, or required to be insured, or proposed for insurance under this Act, or for the purpose of estimating the damage suffered by any property insured under this Act —

(*a*) require the owner or occupier of the property, or any person carrying on in India the business of fire insurance in respect of the property, to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(*b*) at any reasonable time, enter any premises comprising or containing the property, inspect such premises or property, and require any person found on such premises who is for the time being in charge thereof, or in control thereof, or whom he believes to be in possession of information relevant to his investigation, to produce to him and allow him to examine such accounts, books or other documents as he may think necessary, or to furnish to him such other information as he may reasonably think necessary

1 Cf *Duraiswami Iyengar* v *United India Life Insurance Co Ltd* 1956 Mad 316 (1956) 26 Com Cas (Ins) 12 *Controller of Insurance* v *H C Das* 1957 Cal 387

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any demand made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees

(4) Where in any proceedings in respect of a contravention of section 5 in relation to any factory, it is proved, in relation to that factory,—

(*a*) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the owner or occupier of the factory was duly made under this section and was not complied with, and

(*b*) that the person making the demand was not satisfied that there was such a policy in existence, it shall be presumed, except in so far as the contrary is proved, that the said section 5 was being contravened in relation to that factory at the time when the demand was made and continued to be contravened in relation to that factory at all times thereafter

SYNOPSIS

1 *Summary*
2 *Central Government's power to obtain information, sub section* (1)
3 *Any person authorised, his powers* vis-a-vis *information*
4 *Wilful obstruction, consequence of, sub section* (2)
5 *Making false statement, consequences of sub section* (3)
6 *Proof in relation to contravention, sub section* (4)
7 *Presumption*

1 **Summary**—Sub section (1) confers discretion on the Central Government to authorise any person to investigate any of the following matters, namely, (i) whether any owner or occupier of any property has taken out a policy of insurance under this Act, (ii) the insurable value of any property insured, and (iii) the extent of the damage suffered by any property insured Such investigation or ascertainment should be made in the manner laid down in clauses (*a*) and (*b*) of this sub-section Sub-section (2) provides penalty for wilfully obstructing the person so authorised under sub-section (1) in discharge of his duties and for failure to comply with any demand made thereunder Sub section (3) also provides penalty for making recklessly false statement in complying with the person's obligation under this section Sub-section (4) provides how a fact is said to be proved in proceedings for a contravention of section 5 of the fact and the presumption to be made thereunder

2 **Central Government's power to obtain information, sub-section (1)**—This sub-section confers discretion on the Central Government to authorise any person for the purposes of, as follows :

(i) ascertaining whether or not the owner or occupier of any property required to be insured under this Act has taken out a policy of insurance as required by this Act in respect of such property, that is to say, such ascertainment can be made in respect of owner or occupier of a factory, or in respect of owner of the works in course of construction which when completed will become factories, and it can be made even in respect of the part owner or of one having an interest in the property although not the owner ;

(ii) investigating the insurable value of any property insured, or required to be insured, or proposed for insurance under this Act ; and

(iii) estimating the damage suffered by any property insured under this Act Such damage may also be assessed by a loss assessor recognised by the Central Government [1]

3 **Any person authorised, his powers vis-a vis information**—The powers of the person authorised by the Central Government for the purposes of information mentioned in sub-section (1) of this section are,—

(i) he has power to require the owner or occupier of the property, (*a*) to submit to him such accounts, books or other documents, or (*b*) to furnish to him such information as he may reasonably think necessary ;

(ii) he has power to require any person carrying on in India the business of fire insurance in respect of the property, to furnish to him information or to submit account books, etc , as in item (*i*) , or

(iii) he has power at any reasonable time to enter and inspect any premises where the property is situate, to inspect the property itself and to require any person to produce to him and allow him to examine such accounts, books or other documents or to furnish to him such other information as he may reasonably think necessary The person on whom such requisitions can be made is, (i) one found on the premises who is for the time being in charge thereof or in control thereof, or (ii) one whom he (the authorised person) believes to be in possession of information relevant to his investigation

4 **Wilful obstruction, consequences of, sub-section (2)**—Wilfully obstructing the person authorised by sub section (1) of this section in the exercise of his powers conferred by that section or failure, without reasonable excuse, to comply with any demand made by him in accordance with the provisions as contained in this section has been made penal by virtue of sub-section (2) Such wilful obstruction or failure to comply with the demand has been made punishable with a fine extending to one thousand rupees [2]

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1 *See* para 18 Emergency Risks (Factories) Insurance Scheme set out in Annexure I

2. The same defect as is noticed in connection with section 6 is also to be noticed in this section *i e* no Court is mentioned by which such offences may be tried *See* Notes under section 6, *supra*

5 **Making false statement, consequences of, sub section (3)** — The provisions of sub section (3) are also penal A person who is to comply with his obligations under this section must do it truly and to the best of his belief and information The sub-section provides that in complying with his obligations if he makes a statement recklessly which is false to his knowledge in any material particular, he shall be punished with a fine *extending to one thousand rupees In this sub section also it has not* been stated which Court is to try offences under this sub-section

6 **Proof in relation to contravention, sub-section (4)** —Ordinarily in a criminal case the presumption is that the accused is innocent and it is the duty of the prosecution to bring home the guilt beyond any reasonable doubt A departure is made in proceedings in respect of a contravention of section 5 in relation to any factory Thus where it is proved in relation to that factory—

(i) that a demand for the production of a policy of insurance under this Act was made of the owner or occupier of the factory and that demand was not complied with , and

(ii) the person who demanded the production of the policy was not satisfied that any such policy was in existence

This sub-section enjoins that it shall be presumed that there was contravention of section 5 but the person proceeded against can rebut the presumption by proving the contrary

7 **Presumption** —Under the Evidence Act, there are two categories of presumptions, *viz* , (i) "may presume", *i e* , where it is provided in the Act that the Court 'may presume' a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it , and (ii) "shall presume", *i e* , where it is directed by the Act that the Court 'shall presume' a fact, it shall regard such fact as proved, unless and until it is disproved [1] The words used in sub section (4) being "shall presume," there is no option left to the Court but it is bound to take the fact as proved until evidence is given to disprove it and the party proceeded against for the purpose of disproving it must produce such evidence if he can But this presumption should not be treated as "conclusive proof" and that the Court cannot debar evidence to be given for the purpose of disproving it

Punishment for giving false information

9 If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme,—

(*a*) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular , or

(*b*) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(*c*) with intent to deceive, withholds any material information,

he shall be punishable with fine which may extend to five thousand rupees or with imprisonment for a term not exceeding three months or with both

1 *Vide* section 4, Evidence Act (I of 1872)

SYNOPSIS

1 *Summary* 3 *Punishment*

2 *Offences under this section*

1 Summary —The section defines the offences and provides the punishment therefor The offences are, (*i*) furnishing information which is knowingly false, (*ii*) recklessly furnishing false information, (*iii*) producing, furnishing, sending or otherwise making use of any book, account, etc , which is false with intent to deceive, and (*iv*) withholding any material information also with intent to deceive Punishment provided for is fine extending to five thousand rupees or imprisonment for a term not exceeding three months or with both

2 Offences under this section —The elements of an offence under this section are, (*i*) the person must obtain (*a*) for himself, or (*b*) for any other person, (*c*) any payment in respect of any damage due to the action of the enemy, or (*d*) under a policy issued in pursuance of the scheme put into operation of this Act, (*ii*) (*a*) he must furnish any information which he knows to be false in a material particular, or (*b*) recklessly furnishes any information which is false in a material particular, or (*iii*) with intention to deceive (*a*) he must produce, furnish, send or otherwise make use of any book, account or other document which is false in a material particular, or (*b*) he must withhold any material information

The *mens rea* of the offence under this section is the person's obtaining for himself or any other person any payment of damage occasioned on account of enemy action or of any claim under a policy issued under the Emergency Risks (Factories) Insurance Scheme, and in cases where he produces, furnishes sends or otherwise makes use of any books of account or document which is false or withholds any material information there must be the element of deceit

3 Punishment —Punishments contemplated under the section are (*i*) fine, (*ii*) imprisonment, or (*iii*) both, *i e*, fine and imprisonment The maximum of fine that can be imposed under this section is rupees five thousand and the maximum term of imprisonment that can be inflicted is three months The section does not prescribe whether the imprisonments will be rigorous or simple When it is not so mentioned imprisonment contemplated under this section should be simple The section also suffers from the defect as no Court is mentioned by which the offender can be tried [1]

Payments towards cost of removal and reconstruction of factory

10 Where the Central Government requires the owner of a factory to remove the factory and to reconstruct it in another locality, the Central Government shall make to such owner out of the Fund such payments, in addition to any sum payable under the policy of insurance, as it considers sufficient to defray the cost of the removal and, if necessary, the replacement of any part of the property in respect of which no compensation is payable

SYNOPSIS

1 *Summary* 2 *Payments of costs of removal, etc*

1 *See* Notes under section 6

Sub section (2) provides that any instalment of premium due on a policy of insurance under this Act and any amount payable as determined under sub section (1) is recoverable as an arrear of land revenue and the same shall be a first charge on the property in respect of which default had been made

Sub-section (3) confers a right of appeal on the person aggrieved by the determination under sub-section (1) of this section and such appeal will lie to the Central Government whose decision thereon shall be final

2 **Insurance not effected, its consequences, sub-section (1)**—The consequences of failure to insure as required under the Act are, (i) that it is a contravention within the meaning of sub-section (1) of section 5 and is punishable with fine extending to two thousand rupees and with a further fine extending to one thousand rupees after the first day on which the contravention continues, and (ii) that it will be an evasion of payment of premium, the amount of which when determined under sub section (1) of this section, is recoverable as an arrear of land revenue

3 **Insurance not covering full amount and evasion of payment of premium, determination and recovery**—Sub section (1) of this section provides the procedure for determining the amount payable by a person who has evaded the payment by way of premium which he would have to pay but for his failure, (i) to insure as required by this Act, or (ii) to insure to the full amount as required by this Act The determination of such amount has to be made by an officer authorised on that behalf by the Central Government When the amount is so determined by him, it becomes payable by the person who evaded the payment thereof and is recoverable from him as laid down in sub-section (2) of this section

4 **Recoverable as an arrear of land revenue, sub section (2)**—This sub-section provides that where (i) any instalment of premium due on a policy of insurance issued under the Emergency Risks (Factories) Scheme, and (ii) any amount determined as payable under sub section (1) of this section, are not paid, they shall be recoverable as an arrear of land revenue and the amount recoverable shall be a first charge on the property For the recovery of the said amount no suit is necessary but it will be recovered under the provisions of the Public Demands Recovery Act

5 **Appeal, sub section (3)**—Sub section (3) confers a right of appeal on the person aggrieved by the order of determination payable under sub-section (1) Such appeal will lie to the Central Government and it has to be filed within thirty days of the date of receipt of the notice of demand[1] The order passed in appeal shall be final

Limitation on prosecutions

12 No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of the Central Government or an authority authorised in this behalf by the Central Government

SYNOPSIS

1 *Summary* 2 *Persons authorised to prosecute*

1 **Summary**—The section puts limitations on prosecutions for any offences punishable under this Act A private complainant or a public servant has no power to bring a complaint under this Act The persons authorised to make a complaint are mentioned in the section

1 *See* para 13 and Sch III Emergency Risks (Factories) Insurance Scheme

2 **Persons authorised to prosecute**—Persons authorised to institute a prosecution for an offence punishable under this Act are, (i) the Central Government, (ii) any person with the consent of the Central Government, or (iii) any person or authority authorised in this behalf by the Central Government So no Court should take cognizance of any offence punishable under this Act except when the complaint is made by anyone of those persons

Composition of offences

13 Any offence punishable under sub-section (4) of section 5 may, either before or after the institution of the prosecution, be compounded by the Central Government, or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit

SYNOPSIS

1 *Summary* 2 *Composition of offences*

1 **Summary**—This section provides for composition of offences punishable under sub section (4) of section 5 of the Act Such composition may be made either before or after the institution of the prosecution by the persons mentioned in the section and on payment by the offender certain sum to the credit of the Fund

2 **Composition of offences**—This section permits composition of offences punishable under sub-section (4) of section 5 of the Act So a composition allowable under the law should not be withheld on the ground that it was against public policy to do so [1] But certain conditions must be fulfilled before an offence can be compounded under this section They are, (i) the composition is to be made by (a) the Central Government, or (b) any authority authorised in this behalf by the Central Government and (ii) payment of such sum as determined by the Central Government or the authority aforesaid for the credit of the Fund constituted under section 7 of the Act is made The offences that can be compounded under this section are,—

(i) failure to take out a policy of insurance against emergency risks issued in accordance with the Scheme ; and

(ii) failure to pay any instalment of premium on the policy already taken which is subsequently due

Bar of legal proceedings

14 (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act

(2) No suit shall be maintainable in any Civil Court against the Central Government, or a person acting as its agent under section 4, for the refund of any money paid or purporting to have been paid as premium on a policy of insurance taken out or purporting to have been taken out under this Act

1 *Maalayya v State* 1960 Nag L J (Notes) 110, *see* also *Chandanmal v R Ramkrishnayya*, 1942 Mad 173 : 43 Cr L J 731

SYNOPSIS

1 *Summary*
2 *No suit, etc shall lie, sub section (1)*
3 *Suit for refund in any Civil Court barred, sub section (2)*

1 Summary—Sub-section (1) provides that when anything is done in good faith or is intended to be done under this Act, the person doing the act shall not be prosecuted or any suit or legal proceedings can be taken against him Sub-section (2) ousts the jurisdiction of Civil Court to entertain any suit against the Central Government or its agent for the refund of any premium paid on a policy of insurance taken out in conformity with this Act

2 No suit, etc shall lie, sub-section (1)—Where any person does anything which is done in good faith or intended to be done under this Act, no suit, prosecution or legal proceedings shall lie against him for his doing or intended to be done under this Act when he does or intended to be done in good faith The provision is not a general ouster of the jurisdiction of the Court but a suit or prosecution or legal proceedings will not be maintainable against him only when he proves his good faith in doing the act, otherwise a suit, prosecution or other legal proceedings will be maintainable against him

3 Suit for refund in any Civil Court barred, sub-section (2)—The jurisdiction of the Civil Court in so far as it relates to the question of refund of any money paid or purporting to have been paid as premium on a policy of insurance taken out or purporting to have been taken out under this Act is barred The Civil Court must not entertain such a suit when it is brought against the Central Government or its agent employed under section 4 of this Act

In marine insurance where the assured has overinsured, a proportionate part of the premium is returnable[1] but such a doctrine has no place outside marine insurance law[2] In marine insurance, the premium is generally repayable if the risk is not run but special rules govern this question in non-marine insurance cases[3] Refund of premium has been provided in section 16 of the Act and in the Scheme itself The refund under the Scheme may be made in case of overlapping policies[4]

Power to exempt factories

15 (1) The Central Government may, by notification in the Official *Gazette*, exempt any class or description of factories from the provisions of this Act requiring such factories to be insured or to continue to be insured under this Act, but such exemption shall not prejudice the infliction of any penalty or the accrual of any liability incurred before the date on which the exemption takes effect

(2) In granting any exemption under this section, the Central Government may direct that the exemption shall take effect or be deemed to have taken effect on a specified date after or before the date of the notification

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1 *See* Marine Insurance Act

2. Wilenberg v *Royal Co-operative Society* (1913) 84 L J K B 1316

3. See *Stevenson* v *Snow* (1761) 3 Burr 1237

4 *See* para 15 of the Scheme Annexure I for refund under this Act, *see* section 16 *infra*

SYNOPSIS

1 *Summary*
2 *Exemption of factory from the operation of this Act, sub-section* (1)
3 *Exemption to take effect from a specified date, sub-section* (2)

1 Summary—Sub-section (1) confers discretion on the Central Government to exempt any factory from the provisions of this Act and sub-section (2) empowers the said Government to specify a date from when the exemption is to take effect Such exemption has to be made by a notification in the Official *Gazette* and it will not prejudice the infliction of any penalty or the accrual of any liability incurred before the date of such exemption

2 Exemption of factory from the operation of this Act, sub section (1)—Any class or description of factories may be exempted from the provisions of this Act requiring such factories to be insured or to continue to be insured under this Act by the Central Government which is to be made by a notification in the Official *Gazette* But such exemption will not relieve such factories of the infliction of any penalty or liability incurred before the date on which the exemption takes effect

3 Exemption to take effect from a specified date, sub-section (2)—When the Central Government grants any exemption in respect of any class or description of factories from the provisions of this Act in accordance with sub-section (1), it has discretion in granting such exemption to direct that the exemption to take effect or be deemed to have taken effect on a specified date after or before the date of the notification Thus the date of exemption may take effect retrospectively, that is, before the date of the notification in the Official *Gazette* where the factory concerned is exempted from the provisions of this Act

Refund of premiums in certain cases

16 Where any factory has been insured by any owner or occupier thereof for any period, and before that period has elapsed, the factory or the factory of that description has ceased, by virtue of a notification under sub section (1) of section 15 to be insurable under this Act, the person who has insured the factory shall be entitled to a proportionate refund of the premium

SYNOPSIS

1 *Summary*
2 *Factory ceasing to be insurable*
3 *Refund of premium*

1 Summary—The section permits proportionate refund of the premium when it ceases to be insurable under this Act by virtue of a notification made under sub-section (1) of section 15

2 Factory ceasing to be insurable—Any class or description of factories ceases to be insurable under this Act when a notification to that effect exempting such factories from the provisions of this Act is made by the Central Government in the Official *Gazette* Such factories cease to be insurable under this Act before the period has elapsed for which they have been insured by the owner or occupier thereof

3 **Refund of premium** —The person who has insured the factory must be allowed a proportionate refund of the premium when a factory ceases to be insurable under this Act [1]

Power of Central Government to extend the Act and Scheme to undertakings

17 (1) The Central Government may, by notification in the Official *Gazette*, declare that the provisions of this Act and of the Scheme made thereunder shall apply to the insuring against emergency risks of—

(*a*) the plant and machinery, whether above or below ground appertaining to mines as defined in the Mines Act, 1952 (35 of 1952), buildings appertaining to mines and within a radius of two miles from the mine excavation and in relation to such plant, machinery and buildings, such materials above ground as would, if the mine were a factory, be included in the term "property insurable under this Act",

(*b*) derricks, drills and rigs and group gathering stations and storage tank of an oil mine, plant and machinery required for pumping, refining or processing any mineral oil, and pipe lines,

(*c*) the whole or a specified part of the distribution systems of gas supply undertakings generally, or of specified gas supply undertakings,

(*d*) the whole or a specified part of the distribution and transmission systems, sub-stations, switch houses and transformer houses of electric supply undertakings generally, or of specified electric supply undertakings,

(*e*) the whole or a specified part of the sluice houses, valve houses, water pipe lines, penstocks and any other plant and machinery pertaining to the intake of hydraulic power of hydro-electric supply undertakings generally, or of specified hydro-electric supply undertakings,

(*f*) standing tea crops in any garden belonging to the owner of any factory,

as they apply to property insurable under this Act which appertains to a factory

(2) In interpreting this Act as applied by notification under clause (*a*) of sub-section (1) to mines, references to the owner of a factory shall be read as references to the owner or agent of a mine as defined in the Mines Act, 1952 (35 of 1952), and references to the occupier of a factory shall be read as references to the agent of a mine as defined in that Act, and in interpreting this Act as applied by notification under any of the clauses of sub-section (1), "property insurable under this Act" shall be interpreted as meaning all property to which the Scheme is by the said notification declared to apply

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1 *See* para 15 (2) of the Scheme Annexure 1

(b) "vessel" means a vessel, the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds two thousand and five hundred rupees, propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and includes any such vessel while used as a place of habitation or for storage of goods but does not include a vessel of the type commonly called country craft

(3) In the application of this Act and of the scheme made thereunder to the insurance of inland vessels—

(a) the obligation imposed by subsection (1) of section 5 on the owner of a factory shall, in the case of a trading corporation or body of Port Trustees or Commissioners or any other person who or inland vessels become insurable under this Act and the said scheme thereunder, be an obligation imposed on the trading corporation, body of Port Trustees or Commissioners or such other person to take out by such date as may be specified in this behalf by the Central Government by a notification in the Official Gazette, a policy of insurance against emergency risks insured in accordance with the Scheme whereby it is insured in respect of all inland vessels (including fuel carried by the vessels carried by them for the use of the crew) owned by it or in the case of a trading corporation which is incorporated outside India, as the case may be, for a sum not less than the insurable value of such vessels, fuel and stores, and that obligation shall, in the case of a trading corporation which is incorporated outside India of the corporation, be imposed on the principal place of business in India of the corporation;

(b) the provisions contained in subsection (1) of section 6 of this Act shall be deemed to include a provision for the payment by owners of inland vessels to the Central Government of such premia for insurance against emergency risks as may be specified in the Scheme;

(c) nothing in this Act shall prevent the owner of a vessel which is under the control of Port Trustees or Commissioners from entering into an agreement with such Trustees or Commissioners for the insurance of inland vessels belonging to such owner against emergency risks on such terms as may be specified in the agreement.

4. Power to exempt factories from operation of Act.

5. Contributions in respect of insured persons.

6. Recovery of contributions from employers.

7. Penalties.

8. Power to make rules.

9. Power to remove difficulties.

10. Power to amend Schedules.

11. Repeal and saving.

THE SCHEDULES

stations and other ancillary establishments of electric company come within the definition of factory [1] The absence of a profit motive is irrelevant in considering whether an enterprise is an "undertaking" or not, but it must be one which requires the co-operative effort of the employer and the employees; it must be one which is capable of being owned and transferred and it is the nature of the enterprise, irrespective of who does it, that determines whether it is an "industry" or not [2]

4 **Interpretation of the Act when extended to mines, sub section (2)**—When the provisions of this Act are extended to mines as defined in the Mines Act, 1952, the "owner of a factory" should be read as 'the owner or agent of a mine' as defined in the Mines Act and the "occupier" of a factory should be read as 'agent' of a mine [3]

In interpreting the expression "property insurable under this Act" as applied to the mines, it will be interpreted to mean all property to which the same is, by the notification of the Central Government, declared to apply

Power of Central Government to extend the Act to inland vessels

18 (1) The Central Government may, by notification in the Official *Gazette*, direct that the provisions of this Act and of the Scheme made thereunder shall extend and shall so far as they are applicable, apply in the same manner as they apply to the insurance of property insurable under this Act in relation to a factory, to the insurance against emergency risks of inland vessels (including the hull), machinery and fittings thereof, fuel carried therein, and stores carried therein for the use of the crew), being the property of any trading corporation or of any body of Port Trustees or Commissioners or of any other person specified in this behalf by the Central Government, where such vessels, fuel and stores are not for the time being plant or materials insurable in relation to a factory under this Act and the scheme thereunder, or goods insurable under the Emergency Risks (Goods) Insurance Scheme made under the Emergency Risks (Goods) Insurance Act, 1962

(2) In this section, unless the context otherwise requires,—

(*a*) "inland vessel" means a vessel not ordinarily plying outside the limits of the territorial waters surrounding India;

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1 *Calcutta Electric Supply Corporation Ltd v Employees' State Insurance Corporation* 1961 Cal 248

2 *Palace Administration Board v State of Kerala* 1960 Ker 151 (1960) 1 Lab L J 178 *See* also *National Union Commercial Employees v M R Meher* 1960 Bom 22 (1959) 2 Lab L J 38

3 An agent of a mine means any individual whether appointed as such or not who acts as the representative of the owner in respect of the management control and direct on of the mine or any part thereof and as such superior to a manager under this Mines Act (*See* sec 2 (e) Mines Act 1952) owner when used in relation to a mine means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver such liquidator or receiver and in the case of a mine owned by a company, the business whereof is being carried on by a managing agent such managing agent but does not include a person who merely receives a royalty rent or fine from the mine or is merely the proprietor of the mine subject to any lease grant or licence for the working thereof or is merely the owner of the soil and not interested in the minerals of the mine but any contractor for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner but not so as to exempt the owner from any liability [*See* sect on 2(1) Mines Act 1952] *s e* also *Lala Karam Chand Thapar v State of Bihar* 1958 Pat 3 8 *Keshardeo Goenka v Emperor* 38 C W N 418 61 Cal 445 1934 Cal 387 35 Cr L J 712

(*b*) "vessel" means a vessel, the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds two thousand and five hundred rupees, propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and includes any such vessel while used as a place of habitation or for storage of goods but does not include a vessel of the type commonly called country craft

(3) In the application of this Act and of the scheme made thereunder to the insurance of inland vessels—

(*a*) the obligation imposed by sub-section (1) of section 5 on the owner of a factory shall, in the case of a trading corporation or body of Port Trustees or Commissioners or any other person whose inland vessels become insurable under this Act and the Scheme thereunder, be an obligation imposed on the trading corporation, body of Port Trustees or Commissioners or such other person to take out by such date as may be specified in this behalf by the Central Government by a notification in the Official *Gazette*, a policy of insurance against emergency risks issued in accordance with the Scheme whereby it is insured in respect of all inland vessels (including fuel carried by them and stores carried by them for the use of the crew) owned by it or him, as the case may be, for a sum not less than the insurable value of such vessels, fuel and stores, and this obligation shall, in the case of a trading corporation incorporated outside India, rest upon the manager of the principal place of business in India of the corporation ;

(*b*) the prohibition contained in sub-section (1) of section 6 of this Act shall be deemed to include a prohibition of carrying on business of insuring inland vessels in India against emergency risks for insurance against which provision is made under the Scheme ;

(*c*) nothing in this Act shall prevent the fixing of a rate of premium under or the prescription for the time being of any period or periods for policies issued in connection with the insurance of inland vessels different from any rate fixed under or any periods prescribed for policies issued in connection with the insurance of property appertaining to a factory

Provided that the rate of premium so fixed shall not exceed three per cent per annum of the sum insured

SYNOPSIS

1 *Summary*

2 *Central Government's power to extend the Act to inland vessels, sub section* (1)

3 *"Inland vessels" and "vessel", sub section* (2)

4 *Obligations of owners of inland vessels, sub-section* (3) (*a*)

5 *Prohibition of insuring "inland vessels", sub section* (3) (*b*)

6 *Rate of premium and period of policy, sub-section* (3) (*c*)

1 Summary —Sub section (1) confers discretion on the Central Gov ment to extend the provisions of this Act and of the Scheme made thereu to the insurance against emergency risks of inland vessels (including the l machinery and fittings thereof, fuel carried therein and stores carried the for the use of the crew) belonging to any trading corporation incorpora in India or outside or any body of Port Trustees or Commissioners or other person The extension of the Act has to be made by a notificatio the Official *Gazette* But where such vessels, fuels or stores become insur under this Act or under the Emergency Risks (Goods) Insurance Act, 19 they are excepted

Sub section (*2*) defines "inland vessel" and "vessel"

Sub-section (3) imposes obligation on the owners, and in case of trad corporation incorporated outside India on the manager of the princi place of business in India of the corporation to take out a policy of insura against emergency risks in respect of all inland vessels (including fuel carr by them and stores carried by them for the use of the crew) for a sum not l than the insurable value of such vessels, fuel and stores by such date may be specified in the notification Clause (*b*) of this sub-section furth prohibits carrying on business of insuring inland vessels in India agai emergency risks and clause (*c*) of this sub section enjoins fixing the rate premium and period or periods for policies

2 Central Government's power to extend the Act to inland vessel sub-section *(1)* —By sub-section (1), the Central Government has bee empowered, by notification in the Official *Gazette*, to extend and apply t provisions of this Act and of the Scheme made thereunder to the insurance property under this Act in relation to a factory, to the insurance agai emergency risks of inland vessels (including the hull, machinery a fittings thereof, fuel carried therein and stores carried therein for the u of the crew). The power conferred by this sub-section is discretionar But before extending and applying the provisions of this Act an of the Scheme made thereunder to inland vessels, the following cond tions must be satisfied, namely (*i*) that the inland vessels includin fuel and stores must be the property of (*a*) any trading corpora tion, incorporated in or outside India, or (*b*) any body of Port Trustee or Commissioners or (*c*) any person specified by the Central Government (*ii*) that the vessels must be vessels as defined in sub-section (2) of this Act (*iii*) that such vessels, fuel and stores are not for the time being plant o materials insurable in relation to a factory under this Act and the Scheme thereunder , or (*iv*) that such vessels, fuel and stores are not goods insurable under the Emergency Risks (Goods) Insurance Scheme made under the Emergency (Goods) Insurance Act, 1962

3 "Inland vessel" and "vessel", sub section (2) —Clause (*a*) of sub-section (2) defines "inland vessel" to mean a vessel not ordinarily plying outside the limits of the territorial waters surrounding India Clause (*b*) of sub-section (2) defines "vessel" to mean (*i*) a vessel, the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds Rs 2,500, (*ii*) propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and (*iii*) a vessel while used as a place of

habitation or storage of goods, but a vessel does not include a vessel of the type commonly called country craft [1]

4 Obligations of owners of inland vessels, sub section 3 (a) — When the provisions of this Act and of the Scheme made thereunder are extended to inland vessels, clause (*a*) of sub-section (3) imposes an obligation on the Trading Corporation, body of Port Trustees or Commissioners of such other person being the owners of those vessels to take out a policy of insurance against emergency risks issued in accordance with the Scheme The insurance must be made in respect of all inland vessels (including fuel carried by them and stores carried therein for the use of the crew) owned by it or him, as the case may be, for a sum not less than the insurable value of such vessels, fuel and stores [2] Such policy has to be taken out by such date as may be specified in this behalf by the Central Government The obligation to take out a policy as stated above shall rest upon the manager of the principal place of business in India of the Corporation which is incorporated outside India [3]

5 Prohibition of insuring 'inland vessels', sub section 3 (b) — Clause (*b*) of sub-section (3) prohibits the carrying on business of insuring inland vessels in India against emergency risks for insurance against which provision is made under the Scheme [4] The same penalty as provided in sub section (2) of section 6 of the Act will visit the insurer if he issues policy against emergency risks in respect of inland vessels after the provisio is of this Act and of the Scheme made thereunder are extended to such vessels, *i e*, he shall be punishable with fine extending to five thousand rupees with a further fine extending to one thousand rupees for every day after the first on which the contravention continues

6 Rate of premium and period of policy, sub section 3 (c) — Clause (*c*) of sub-section (3) of this section permits fixation of a rate of premium under or the prescription for the time being of any period or periods for policies issued in connection with the insurance of inland vessels Such fixation of the rate of premium or the period or periods for policies may be different from any rate fixed under or any periods prescribed for policies issued in connection with the insurance of property appertaining to factory But the provision to this clause provides that the rate of premium so fixed must not exceed 3 per cent per annum of the sum insured

Power to remove difficulties

19 If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether a person is insurable in respect of any property insurable under this Act, the Central Government may, by order, make such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty, and the decision of the Central Government, in such cases, shall be final

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1 Vessel shall include any ship or boat or any other description of vessel used in navigation [*see* sec 3 (63) General Clauses Act 10 of 1897] *see* sec 742 Merchant Shipping Act 1894 sec 48 Indian Penal Code 1860 sec 3 (*f*) Sea Customs Act 8 of 1878 and sec 3 (4) Northern India Canal and Drainage Act 8 of 1873 and *see* also Notes under sec 2 Marine Insurance Act 11 of 1963

2 For mode of valuation of insurable property *see* para 7 of the Scheme Annexure I

3 *See* also Notes under sec 5 *supra*

4 *See* Notes under sec 6 *supra*

SYNOPSIS

1 *Summary*

2 *Difficulty in giving effect to the provisions of the Act*

3 *Doubt arising as to whether a person is insurable under the Act*

1 Summary —This section confers power on the Central Government to remove any difficulty or doubt in connection with giving effect to the provisions of this Act or in connection with the question as to whether a person is insurable in respect of any property insurable under this Act Such removal of difficulty or doubt can be removed by way of making directions not inconsistent with the provisions of this Act and the decision of the Central Government in this regard shall be final In making such direction by way of order, the Central Government must be satisfied as to the necessity or expediency for the removal of doubt or difficulty

2 Difficulty in giving effect to the provisions of the Act —This section has been enacted by way of abundant caution The difficulty in giving effect to the provisions of this Act may or may not arise but if it arises at all, it has to be removed by the Central Government by order making such directions not inconsistent with the provisions of this Act, as would appear to it to be necessary or expedient for the removal of difficulty and its decision thereon shall be final Such difficulty may be felt by the Government Agent employed under section 4 of the Act or by the owner or occupier of any factory His duty in such cases is to refer the difficulty to the Central Government for its decision thereon under this section Such difficulty may arise as pointed out already with regard to the provisions of sections 6 (2), 8 (2) and (3) and 9 of this Act

3 Doubt arising as to whether a person is insurable under this Act —The section further provides that if any doubt in particular arises as to the question whether a person is insurable in respect of any property insurable under this Act, such doubt has also to be removed by the Central Government It should do so by order, making such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of that doubt and its decision thereon shall be final Such doubt may arise to the owner or occupier of a factory or to the Government agent or to an officer or person authorised by the Central Government under this Act to do certain Acts

Notifications under section 15 17 or 18 to be laid before Parliament

20 A copy of every notification made by the Central Government under section 15, 17 or 18 shall be laid after it has been made, on the table of each House of Parliament when such House is in session for a period of thirty days or for the duration of the session in which it is laid, whichever period is less

SYNOPSIS

1 *Summary*

2 *Copy of notification to be laid before each House of Parliament*

1 Summary —The provision of this section is mandatory as it casts a duty on the Central Government that a copy of every notification after it is made, shall be laid on the table of each House of Parliament when such House is in session for a period of thirty days, or for the duration of the session in which it is laid, whichever period is less

2 **Copy of notification to be laid before each House of Parliament**—The copies of notifications which are required to be laid on the table of each House of Parliament for the period provided in this section are—

(i) where the Central Government exempts any class or description of factories from the provisions of this Act as provided in section 15,

(ii) where the Central Government extend the provisions of this Act and of the Scheme made thereunder for insuring against emergency risks to undertakings enumerated in clauses (*a*) to (*f*) of section 17, and

(iii) where the Central Government direct that the provisions of this Act and of the Scheme made thereunder shall apply to the insurance against emergency risks of inland vessels as provided in section 18

ANNEXURE I

EMERGENCY RISKS (FACTORIES) INSURANCE SCHEME

S O 3946 In exercise of the powers conferred by sub section (1) of section 3 of the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962), the Central Government hereby puts into operation the following scheme

1 **Short title, extent and commencement**—(1) This scheme may be called the Emergency Risks (Factories) Insurance Scheme

(2) It extends to the whole of India

(3) It shall come into force on the first day of January, 1963

2 **Definitions**—In this scheme, unless the context otherwise requires,—

(i) "the Act" means the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962),

(ii) "Government agent" means any person employed under section 4 to act as the agent of the Central Government for any of the purposes of the Act,

(iii) "paragraph" means a paragraph of this scheme,

(iv) "policy" means a policy of insurance issued under this scheme, and includes any supplementary policy,

(v) "section" means a section of the Act,

(vi) words and expressions not defined herein have the meanings assigned to them in the Act

3 **Scope and extent of the scheme** — 1) The Central Government hereby undertakes in relation to factories the liability of insuring such factories against emergency risks to the extent provided by the Act

(2) The Central Government also hereby undertakes in relation to any person in India the liability of insuring such person against emergency risks in respect of any property insurable under the Act which is not owned by him but in which he has an interest, up to the extent of such interest

4 **Insurance of completed factories** —(1) Evety owner of a factory in existence at the commencement of this scheme shall, within the period specified in the notification made under sub section (1) of section 5, take out a policy of insurance against emergency risks in accordance with this scheme

(2) Subject to the provisions of paragraph 5, every owner of premises becoming a factory or property becoming property insurable under the Act after the date specified in the notification referred to in sub-paragraph (1) shall, before the commencement of the quarter next following that in which the premises become a factory or the property becomes insurable under the Act, take out a policy of insurance against emergency risks in accordance with this scheme

(3) Every owner of a factory who is required by the Central Government to re-construct the factory which has suffered damage shall, before the commencement of the quarter next following that in which the reconstruction of the factory is completed, take out a policy of insurance against emergen y risks in accordance with this scheme

(4) Where the owner of the factory is not the occupier thereof, the occupier of the factory shall, unless the owner has already taken a policy of insurance, himself take out the policy and when such a policy is taken out, the occupier shall be deemed to act as the agent of the owner and shall be entitled to receive from the owner all sums paid by him as premiums on the policy

5 **Works in course of construction** —(1) This scheme shall also extend to the undertaking by the Central Government in relation to works in the course of con truction which, when completed, will become factories and in relation to plant and machinery appertaining to such works, the same liabilities as are undertaken by this scheme in relation to factories, to the extent such plant or machinery is not for the time being covered against emergency risks by any other policy of insurance and also to the extent such plant or machinery is not insurable for the time being under the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962)

(2) A policy may be taken out optionally at the instance of the owner or the intending occupier in relation to the works and plant and machinery referred to in sub paragraph (1) When any such option is exercised, an application for the policy shall be made within one month from the date of commencement of this scheme, or one month from the commencement of the works, whichever is later An option once exercised shall be final, and where a policy of insurance has been taken out under this provision, it shall also be compulsory for the owner to take out policies of insurance in subsequent quarters until such time as the completed factory becomes compulsorily insurable under the provisions of paragraph 4

6 **Method of application** —(1) Every application for insurance under the scheme shall be in accordance with the form set out in Part A or Part B of the First Schedule according as the application is for an original or a supplementary policy and shall be made to the Government agent or to such officer of the Government agent as may be authorised by that agent in this behalf

(2) Every such application shall be accompanied by a treasury chalan evidencing payment of the requisite premium into a Government treasury under the head LXIA—Receipts connected with the National Emergency, 1962—Central Insurance premiums under the Emergency Risks (Factories) Insurance Scheme

(3) If there is any change in the ownership or occupation of a factory during the currency of a policy of insurance notice thereof shall be given to the Government agent in the form set out in the Seventh Schedule

7 **Mode of valuation of insurable properties** —For the purpose of insurance under the Act, the insurable value of property shall be ascertained in accordance with the following principles

(*a*) The insurable value shall be the actual value in the case of completed works, and the estimated value of the works which are in the course of construction, or additions to property which are anticipated or expected to be completed, in both cases at the produces prevailing on the relevant dates after making allowance for any depreciation

(*b*) All plant and machinery which is part of the property to be insured under the scheme shall be valued as part of a going concern and not as scrap

(*c*) The relevant dates referred to in clause (*a*) shall be—

(i) in relation to completed works, the date from which the policy is to take effect ; and

(ii) in relation to works which are in the course of construction or additions to property which are anticipated or expected to be made, the last day of the quarter in which the application for insurance is made

[1]8 **Rate of premium** —The premium payable under any policy of insurance in respect of the quarter ending on the 30th day of June, 1964, shall,—

(*a*) in the case of a person having a policy in force on the 31st day of December 1963, be nil ,

(*b*) in any other case, be such amount (not exceeding ten Paise for every hundred rupees or part thereof of the sum insured), as the Central Gover ment may, in its discretion, fix having regard, among other things, to—

(i) the nature of the risk,

1 Subs by S O 1114 dated 28 3 1964 published in the *Gazette of India* (Extra ordinary) Part II Section 3 30 3-1964 (with effect from

(ii) the claims, if any, paid under this Scheme ,

(iii) the period for which protection is granted under this Scheme]

9 **Issue of policy and verification of previous policies** —(1) If the application has been correctly made out in the prescribed form and is accompanied by a treasury chalan evidencing payment of the premium into a treasury under the head of account specified in sub paragraph (2) of paragraph 6, the Government agent shall issue a policy of insurance as soon as possible after the receipt of the application

(2) If no chalan accompanies an application or if the chalan is not in order, the application shall be returned to the applicant for re submission along with the required chalan

(3) If the chalan accompanying an application is in order but the application for insurance is not received in accordance with the form set out in the First Schedule, the chalan may be obtained by the Government agent and the application returned to the applicant for re submission after being correctly made out

(4) If the chalan accompanying an application form is for an amount which falls short of the premium due on the insurable value of the property, a policy for such proportion of the insurable value as the amount paid under the chalan bears to the premium due shall be issued and the applicant shall be asked to make a further application in respect of the balance of the insurable value of property which may remain uncovered

(5) Notwithstanding anything contained in the provisions of the foregoing sub-paragraph, if an application shows that the applicant has taken out a policy of insurance in respect of the same property or any part thereof against fire, accident or marine risks issued by any insurer, the Government agent may, in his discretion, postpone the issue of a policy under this scheme until enquiries have been made from that insurer

10 **Form and duration of policy** —Every policy of insurance issued under the scheme shall be in the form set out in the Second Schedule, and shall be in respect of the period ending on the last day of the quarter for which the policy is issued

11 **Each factory to be covered by one policy** —(1) Every policy shall be in respect of property insurable under the Act appertaining to a single factory, provided, however, that when any plant machinery or materials appertain to more factories than one, such plant, machinery or materials may be insured separately under a single policy issued in relation to the owner or occupier of any one of those factories

(2) If during the currency of a policy, any additions are made to the property insurable under the Act appertaining to the factory, a supplementary policy shall be taken out in respect of such additions

12 **Date of effect of policies** —(1) Where the policy of insurance is in respect of a completed or normally working factory, the owner or occupier of which is required to take out a policy of insurance in accordance with the provisions of paragraph 4, the policy shall be issued so as to take effect from the date on which he becomes so liable If the premium is paid in advance

(2) Notwithstanding anything contained in the scheme, where a policy has been taken out in respect of any property insurable under the Act appertaining to a factory or other premises and that factory or premises is subsequently exempted under section 15 or is destroyed otherwise than by any action or measure comprised in the expression "emergency risks", the policy shall be cancelled with effect from the date on which the exemption takes effect or, as the case may be, the factory or premises are destroyed as aforesaid, and thereupon out of the amount of the premium collected immediately before the cancellation of the policy, in respect of the quarter in which the policy is cancelled, a refund shall be made in the proportion which the number of complete months for which the policy is cancelled bears to three

16 Share of risks to be borne by the insured person—(1) The insured person shall bear in respect of such claim twenty per cent of the loss or damage

(2) If the total value of the property insured shall exceed the sum insured under the policy, the insured person shall be considered as being his own insurer for the excess as well as for twenty per cent of the sum insured, for the purpose of his bearing a rateable proportion of the loss

17 Mode of settlement of claims—(1) Payment of compensation under the scheme shall be made, at the option of the Central Government, within the limits of the liability assumed by it in any of the following forms, namely,—

(a) in a case where the Government exercises the option to pay the cost of restoring the property lost or damaged as far as practicable to the condition in which it existed before the occurrence of such loss or damage, on such restoration, in such manner and by such instalments as the Central Government may think fit, or

(b) in a case where the Central Government decides to make the payment in instalments during the progress of the works relating to the restoration of the property lost or damaged in instalments as determined by that Government and at the expiration, in the case of each instalment, of such period, after the restoration of the relevant parts, as may be required to ascertain the fact of restoration and the proper cost there of, or

(c) compensation for the loss in value, ascertained on the values and prices prevailing at the time at which the policy of insurance took effect, or at which the loss occurred, whichever is less, suffered by the property as a result of the damage, after making due allowance for depreciation up to the time of the occurrence of the loss or damage, in such instalments, if any, as the Central Government may think fit

(2) Any payment under sub-paragraph (1) may be postponed to a date later than one year from the date on which the Act ceases to be in force but in the event of such postponement, simple interest at the rate of two per cent per annum from the expiry of the said one year shall be paid on the portion of claim admitted by the Central Government and remaining unpaid, until such time as the claim is discharged in full

18 **Statement of claims, verification and payment** —(1) All claims shall be submitted in writing in the form given in the Fourth Schedule to the Government Agent within the time specified in condition 7 of the conditions set forth in the Second Schedule

(2) On receipt of a claim, the Government Agent shall have the claim verified, and the loss or damage, if any, assessed by a person who is for the time being a loss assessor recognised by the Central Government in this behalf, or if the Central Government so directs, by such person or persons as may be specially deputed by it for this purpose

(3) As soon as the loss assessor has verified the claim and assessed the loss or damage, if any, he shall make a report thereon to the Government Agent, who shall after such further verification as he thinks fit to make, forward the report, with his remarks and recommendation to the Government of India in the Ministry of Finance (Department of Economic Affairs)

(4) On receipt of any payment under this scheme, the claimant shall give a receipt in the form set out in the Fifth Schedule

19 **Provision for safeguarding of property insurable under the scheme** —(1) The Central Government may make regulations for safeguarding any property insurable under this scheme against loss or damage as a result of emergency risks or for minimising any such loss or damage and may without prejudice to the said regulations issue any general or special order, to all factories generally or to any particular factory as it may think fit for the purposes aforesaid

(2) Any order issued under sub-paragraph (1) may require the owner or occupier of a factory in respect of which any payment towards the restoration of property has been made under this scheme to reconstruct the factory or to alter the premises thereof in such manner as to avoid or minimise the consequences of any future emergency risks or to provide for such safety or precautionary measures as may reasonably be necessary, or if it is considered expedient or necessary so to do, to remove the factory or the premises, as the case may be, to any other site

(3) Every owner or occupier shall comply with the requirements of any regulations or orders made in this behalf

(4) Where the Central Government requires the owner or occupier of the factory to remove the factory or the premises to any other site as provided for in sub-paragraph (2), the Central Government shall pay to such owner or occupier the cost of removal of the factory or the premises and the cost of replacement of any property for which compensation may not be otherwise payable but which may be lost or damaged as a result of removal, on the receipt of a claim from the owner or occupier, and the procedure prescribed in paragraph 18 shall be followed, as far as practicable, in relation to the verification and payment of any such claim

20 **Persons authorised for certain purposes of the Act** —The Central Government may authorise any person under section 8 of the Act to obtain any information and to do any other thing as provided for in the said section, and every person who is liable to take out, or who has taken

out, a policy of insurance under this scheme shall at all times provide and cause to be provided all reasonable facilities to the person so authorised, for enabling him to discharge his duties in pursuance of or in relation to this scheme

21 **Publication of accounts** —An account of all sums received into and paid out of the Emergency Risks (Factories) Insurance Fund shall be prepared in the form set forth in the Sixth Schedule and shall be published annually

22 **Interpretation** —If any doubt arises in regard to the interpretation of any provisions of this scheme, the matter should be referred to the Central Government whose decision thereon shall be final

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THE FIRST SCHEDULE

(*See* paragraph 6)

PART A

FORM OF APPLICATION

Government of India

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962
(63 of 1962)

Application for insurance of property insurable under the Act

No

1 Applicant's name

2 Address

3 Business

4 Description and situation of the premises

5 Are the premises a factory as defined in section 2(*m*) of the Factories Act, 1948 ?

6 If not, and if they are in course of construction, will they be so when completed ?

7 Date on which property to be insured became insurable

8 What is the nature of your interest in the property to be insured ?

9 If you are the occupier of the factory within the meaning of section 2(*n*) of the Factories Act but do not own the property, the following should be answered

(i) Name and address of owner

(ii) Have you been requested by the owner to effect this insurance on his behalf ?

(iii) If not, are you aware whether the owner is also applying for insurance ?

10 Description of property to be insured

11 Are the Buildings, Plant, Machinery and Materials of the property to be insured, insured against Fire, Accident or Marine Risks ?

12 If so, state (*a*) Name of insurer

(*b*) Total sum insured on—

(i) the Building, Rs

(ii) the Plant, Machinery and Materials, Rs

Total Rs

13 Insurable value, that is to say, the value after making allowance for depreciation on the date of this application, of—

(*a*) the Buildings, Rs

(*b*) the Plant, Machinery and Materials, Rs

Total Rs

14 In the case of works in course of construction what is the estimated value on the last day of the quarter in which the insurance is effected, of—

(*a*) the Buildings, Rs

(*b*) the Plant, Machinery and Materials, Rs

Total Rs

NOTE—Separate amounts must be declared as between (*a*) and (*b*) in answer to questions 13 and 14 but separate amounts need not be declared against each block In the event of a claim, however, the claimant may be called upon to show in detail how the valuation has been made up

15 (i) Has any other person any insurable interest in the property to be insured ?

(ii) If so, give particulars

16 Date from which insurance is to commence

I/We warrant that the above statement and particulars are true and I/we request you to effect Emergency Risks (Factories) Insurance on my/our behalf with the Government of India in terms of the standard policy which I/we agree to accept

I/We further agree that this application shall be the basis of the tract between the President and myself/ourselves.

6 Amounts insured by the previous policies on—

(*a*) the Buildings, Rs

(*b*) the Plant, Machinery and Materials, Rs

Total Rs

7 Description of the property to be insured

8 Additional amounts for which insurance is to be effected *on*—

(*a*) the Buildings, Rs

(*b*) the Plant, Machinery and Materials, Rs

Total Rs

9 Reasons for making this application

10, (i) Has any other person any insurable interest in the property to be insured ?

(ii) If so, give particulars

11 Date from which insurance is to commence

I/We warrant that the above statement and particulars are true and I/we request you to effect Emergency Risks (Factories) Insurance *on my/our* behalf with the Government of India in terms of the standard policy which I/we agree to accept

I/We further agree that this application shall be the basis of the contract between the President and *myself/ourselves*

I/We enclose chalan dated for Rs paid into

*State Bank of India

*The Treasury

*Reserve Bank of India

at

Date

Signature of applicant

(*Strike out whichever is inapplicable)

ACKNOWLEDGMENT

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962
(63 of 1962)

Received from application number dated along with chalan dated for Rs paid into

*The Treasury

*Reserve Bank of India

*State Bank of India

at

Date

Signature of authorised representative of Government Agent

(*Strike out whichever is inapplicable)

SECOND SCHEDULE

(*See* paragraph 13)

Government of India

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962
(63 of 1962)

Policy No

Supplementary to

Policy No

Policy of Insurance in respect of properties insurable under the Act

This Policy and the specification hereto (which forms an integral part of this Policy) shall be read together as one contract, and the words and expressions to which specific meanings have been attached in the Specification shall bear those meanings wherever they may appear

The Specification

The President *The President of India*

The Government Agent

The Insured

Address

The Insured's business

The property insured

Description and situation of property insured

Sum for which insured

(*a*) Buildings, Rs

(*b*) Plant, Machinery and Materials, Rs

Total Rs

Period of Insurance

From the day of 19

to the day of 19

Premium

Paid into {*The Treasury / *Reserve Bank of India / *State Bank of India}

on the day of 19 at .

(*Strike out whichever is inapplicable)

Whereas the Insured has made and forwarded to the Government Agent a signed application for insurance, which application he has agreed shall be the basis of this Policy and has paid the amount of premium named above

Now this Policy witnesseth that in consideration of the Insured paying to the President the said premium, the President agrees (subject to the conditions contained herein, which conditions shall, or so far as the nature of them respectively will permit, be deemed to be conditions precedent to the right of the Insured to recover hereunder), that if during the period of insurance stated above the property insured or any part of such property shall suffer any loss or damage, being loss or damage caused by any act comprised in the expression "Emergency Risks" as defined for the time being in the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962), herein after referred to as "the Act", the President will indemnify the Insured against diminution in value caused by that loss or damage to the extent provided by or under the Act

In witness whereof I, being duly authorised in that behalf, have hereto set my hand for and on behalf of the President

Signed for and on behalf of the President this day of 19

CONDITIONS

1 The President shall be under no liability under any policy of insurance to which these conditions apply (hereinafter referred to as "the policy") if and in so far as the Insured is not entitled to be insured for the sum thereby insured in respect of the property insured under the Act

2 The liability of the President under the policy shall not exceed in the aggregate eighty per cent of the sum thereby insured, and after the happening of any loss or damage, the sum insured by the policy shall be deemed to be reduced by the amount of that loss or damage, and thereupon the liability of the President shall be limited to eighty per cent of the reduced sum

3 The Insured shall bear, in respect of each claim, twenty per cent of the loss or damage

4 If at the time of the happening of any loss or damage the sum insured by this policy shall be less than (*a*) the total value of the property at the time of the loss or damage, or (*b*) the total value of the property on the date of commencement of insurance whichever is less the Insured shall be considered as being his own insurer for the excess as well as for twenty per cent of the sum insured for the purpose of his bearing a rateable proportion of the loss

5 If at the time of the happening of any loss or damage there be any other insurance effected by or on behalf of the Insured covering any of the property suffering that loss or damage against emergency risks, the liability of the President under the policy shall be limited to eighty per cent of its rateable proportion of such loss or damage

6 The Insured shall at the request and expense of the President do and concur in doing and permit to be done all such acts and things as may be reasonably required by the President for the purpose of enforcing any rights and remedies to which the President is or would become entitled or subrogated upon paying for or making good any damage, whether such acts and things shall be required before or after that indemnification by the President

7 On the happening of any loss or damage, the Insured shall forth with give notice thereof in writing to the Government agent, and shall within ten days after such loss or damage, or such further time as the Government agent may in writing allow, at his own expense deliver to the Government agent a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of the property suffering that loss or damage and of the amount of such loss or damage having regard to their value on the basis of the values and prices prevailing on the date of the commencement of the insurance or on the date on which the damage or loss occurred whichever is less together with details of the interest of any person other than the Insured in the property Insured and details of any other insurances on the property insured The insured shall also give to the Government Agent all such proofs and information with respect to the claim as may reasonably be required, together with (if demanded) a declaration verified by an affidavit, or the truth of the claim and of any matters connected therewith No claim under the policy shall be payable, unless the terms of this condition have been complied with

8 If the claim be in any respect fraudulent, or if any fraudulent means or devices be used by the Insured or anyone acting on his behalf to obtain any benefit under this policy, or if any loss or damage be occasioned by the wilful act or with the connivance of the Insured, all benefits under the policy shall be forfeited

Provided that the benefits under the policy shall not be forfeited even though the loss or damage is occasioned by the wilful act and with the connivance of the Insured, where the wilful act is done under orders of proper authority, or where the Insured permits certain measures to be taken under orders of proper authority, and if any question arises as to whether any act of the kind mentioned above has been taken under proper authority, the Central Government shall decide the matter and such decision shall be final and fully binding on the Insured

9 On the happening of any loss or damage, in respect of which a claim is or may be made under the policy, the Government Agent

and every person authorised by the Government agent may, without thereby incurring any liability and without diminishing the right of the President to rely upon any conditions of the policy, enter, take or keep possession of the building or premises where the loss or damage has happened, and may take possession of or require to be delivered to them any of the property insured, and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner This condition shall be evidence of the leave and licence of the insured to the President so to do If the insured or anyone acting on his behalf shall not comply with the requirements of the President, or shall hinder or obstruct the President or any person acting on his behalf in doing any of the abovementioned acts, then all benefits under this policy shall be forfeited The insured shall not in any case be entitled to abandon any property to the President, whether taken possession of by the President or not

10 No refund of premium shall be allowed in respect of the policy except as provided by or under the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962)

11 In the event of a transfer of interest, this policy may be assigned but such assignment shall not take effect until notice of assignment has been given to the President

12 The insured shall at all times take due precautions for the safety of the property insured having regard to the nature thereof, and in particular, if at any time any property insured sustains damage due to emergency risks, the insured shall take all reasonable steps to preserve the property insured from damage or further damage, as the case may be

13 If in his application for the insurance effected by the policy, the insured shall have intentionally made a material mis statement as to the value of the property insured, all benefits under the policy shall be forfeited

14 If the insured shall fail to comply with any regulations or instructions made or issued under the authority of the Central Government for safeguarding the goods against loss or damage from emergency risks, all benefits under the policy shall be forfeited

15 The amount which the insured may provide for depreciation and which may be entered in the annual accounts of the insured shall not be taken as final and conclusive as against either the President or insured in settling any loss or damage which may occur

16 If the President elects to pay eighty per cent of the cost of restoring any property insured, the insured shall at his own expense produce and give to the President all such plans, documents, books and information as the President may reasonably require The President shall not be bound to Pay the cost of exact or complete restoration but only of such restoration as circumstances permit and as is reasonably sufficient and shall not in any case be bound to expend in respect of the property insured more than eighty per cent of the sum insured thereon

17 If the President elects to pay eight per cent of the cost of restoring the Property insured, the Insured shall, if so required by the President reconstruct the factory or remove the factory to and reconstruct it in such

6 Where an assessment and determination have been made against more persons than one in respect of the same property, every person preferring an appeal shall do so separately and in his own name

7 An appeal under paragraph 5 or 6 above shall contain all material statements and arguments relied on by the appellant, shall be accompanied by a copy of the notice of demand served upon the appellant, and shall be preferred through the authority against whose order the appeal is preferred

8 The appellate authority shall consider—

(*a*) whether the facts on which the notice of demand was based have been established, and

(*b*) whether the sum determined as payable is excessive, adequate or inadequate,

and after such consideration shall pass such order as it thinks proper But no order enhancing the amount determined as payable by the appellant, shall be passed without first communicating to him the grounds on which such order is proposed to be passed and giving him an opportunity to show cause against the same

9 The appellant shall have right to appear in person or to be represented before the appellate authority

FOURTH SCHEDULE

(*See* Paragraph 13)

Government of India

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962 (63 of 1962)

Statement of claims under the Act

Through

Government Agent

at .

I/We of (address) . do hereby solemnly declare that on or about O'clock a m /p m Indian Standard Time on the day of 19 property which was insured under the policy or policies detailed in Schedule A annexed hereto, were destroyed or damaged by an act comprised in the expression "Emergency Risks" as defined by the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962) The actual details of the Act (manner in which the damage occurred) are given below

I/We further solemnly declare that at the time of the said loss or damage the actual value of the property as described in the said policy or policies amounted to Rs as more particularly set forth in the annexed Schedule B, and that apart from myself/courselves no person other than , has any interest in the said property,

other locality as may be specified by the President, in which case the insured shall be compensated for the cost of removing such part of the property not affected by the loss or damage

18 The following condition may be included in the policy at the request of the insured

"It is hereby agreed and declared that shall, to the extent of their interest in the property insured, be entitled jointly with the insured to the rights hereby granted to the insured, but not so as to grant to them any further or greater rights than those of the Insured under this policy"

THIRD SCHEDULE

(*See* Paragraph 18)

Where any officer authorised in this behalf by the Central Government has reason to believe that owner or occupier of any property insurable under the Act situated within the area which he is authorised to act, has failed to insure as, or to the full amount, required by the Act or the scheme, or having applied for a policy of insurance under the Act or the scheme, has failed to pay any premium payable under the Act within seven days of the date of commencemeot of the policy as stated in the application, and has thereby evaded payment by way of premium of any money which he would have had to pay but for such failure, the officer may serve on such owner or occupier or person a notice requiring him (i) to show cause on a date and at the time and place specified in this behalf why he failed to insure the property as, or to the full amount, required by the Act and further (ii) to produce before the officer on such date any document or other evidence in support of his case

2 Upon cause being shown and after giving the defaulter an opportunity of being heard in support of the cause, the Officer shall assess the insurable value of the property and shall determine on the basis of such assessment the amount of premium, if any, payment of which has been evaded by the defaulter In doing so, the Officer shall take into consideration such information as he may have received in accordance with section 8 after giving the defaulter an opportunity to explain the same

3 If an owner or occupier fails to show cause against a notice issued paragraph 1 of this Schedule, the Officer shall assess the insurable value of the property on the strength of such materials as may be available to him and shall determine on the basis of such assessment, the amount of premium payment of which has been evaded by the defaulter

4 When any sum has been determined in accordance with paragraph 2 or paragraph 3 of this Schedule, the Officer shall send to the defaulter a copy of his recorded assessment and determination, duly certified by him, and serve on him a notice of demand specifying (i) the amount payable by him, (ii) the date within which it shall be paid and (iii) the treasury into which it shall be paid

5 Any person against whom an assessment and a determination have been made in accordance with paragraph 2 or paragraph 3 of this Schedule may appeal to the Government of India in the Ministry of Finance, Department of Economic Affairs, within thirty days of the date of receipt of the notice of demand

6 Where an assessment and determination have been made against more persons than one in respect of the same property, every person preferring an appeal shall do so separately and in his own name

7 An appeal under paragraph 5 or 6 above shall contain all material statements and arguments relied on by the appellant, shall be accompanied by a copy of the notice of demand served upon the appellant, and shall be preferred through the authority against whose order the appeal is preferred

8 The appellate authority shall consider—

(a) whether the facts on which the notice of demand was based have been established, and

(b) whether the sum determined as payable is excessive, adequate or inadequate,

and after such consideration shall pass such order as it thinks proper But no order enhancing the amount determined as payable by the appellant, shall be passed without first communicating to him the grounds on which such order is proposed to be passed and giving him an opportunity to show cause against the same

9 The appellant shall have right to appear in person or to be represented before the appellate authority

FOURTH SCHEDULE

(*See* Paragraph 13)

Government of India

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962 (63 of 1962)

Statement of claims under the Act

Through ,

Government Agent

at

I/We of (address) do hereby solemnly declare that on or about O'clock a m /p m Indian Standard Time on the day of 19 property which was insured under the policy or policies detailed in Schedule A annexed hereto, were destroyed or damaged by an act comprised in the expression "Emergency Risks" as defined by the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962) The actual details of the Act (manner in which the damage occurred) are given below

I/We further solemnly declare that at the time of the said loss or damage the actual value of the property as described in the said policy or policies amounted to Rs as more particularly set forth in the annexed Schedule B, and that apart from myself/courselves no person other than , , , , , , , has any interest in the said property,

Assessor's Certificate

I/We being Assessor/s duly appointed under paragraph 18 (2) of the Emergency Risks (Factories) Insurance Scheme certify that from a careful examination carried out by me/us of the scene of the loss or damage and from the production of books, documents, invoices and other evidence have satisfied myself/ourselves that the property was fully insured at the time of the loss or damage, and that the statement of claims detailed herein, (*and in our report attached) is a true and proper statement of the actual loss as the direct result of Emergency Risks only

Time taken on assessment

Fee Rs

Signature of Loss Assessor

Address

Date

RECOMMENDATION OF GOVERNMENT AGENT

We certify that the claim detailed in this Statement of Claims was received by us in accordance with Condition 7 of the Insurance Policy, that the Statement of insurances in force contained in Schedule A is a correct statement, that we have investigated the claimant's title, and we recommend that (*except as stated in the attached report) the sum of Rupees be paid in full and final settlement of the loss, (ii) and (iii) that the sum of Rs be paid to the Assessor in respect of his fee and expenses

Signature of Government Agent

Date

GOVERNMENT ORDERS FOR DISPOSAL

*Delete and initial deletion if no separate report

FIFTH SCHEDULE

(*See* paragraph 18)

Government of India

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962

(63 of 1962)

Receipt of Claims

Loss No

Received this day of 19 , from the Government of India the sum of Rupees in full discharge of all claims as the instalment of the claim upon them under the Policy/Policies No /Nos issued under the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962), for loss or damage, arising from Emergency Risks as defined in the said Act, which occurred on the day of 19 , in consequence of which the amount insured by this policy is reduced to the extent of Rs

Signature of Claimant

Stamp

SEVENTH SCHEDULE

(*See* Paragraph 6)

FORM 1

Transfer of Policy from owner to owner

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962
(63 of 1962)

Notice of assignment to be completed in triplicate and sent for registration to the Government Agent

Policy No

Buildings Rs

Machinery/

Plant/Material Rs

Total Rs

Description and situation of property

I/We do hereby assign all my/our rights, title and interest in the above-mentioned policy and all benefits thereunder to

Dated this day of 19

(Signature of Assignor)

Assignee

Assignees

I/We in accepting the above assignment agree that the application form referred to in the policy as forming the basis thereof shall continue to form the basis of the policy

Witness to Signature (Signature of assignee)

Registered in the Office books of the Government Agent at this day of

(Signature of Government Agent)

Note—In registering the assignment, the President is not to be understood to express any opinion as to the validity or otherwise of the Deed or Deeds of which he receives notice

The original of this form is to be returned to the Assignee

The duplicate of this form is to be sent to the Accounts Officer concerned

The triplicate of this form is to be retained by Government Agent

SIXTH SCHEDULE

(*See* Paragraph 21)

Account of sums received into and paid out of the "Emergency Risks (Factories) Insurance Fund" during the year ending 19

		Amount		Progress of receipts up to the end of				Amount		Progress of expenditure up to the end of	
		Rs	P	Rs	P			Rs	P	Rs	P
	Receipts						*Expenditure*				
1	Insurance premiums					1	Remuneration and expenses of Government Agent and cost of forms				
2	Advances from the Consolidated Fund of India under section 7 (3)					2	Payments of liabilities under the Emergency Risks (Factories) Insurance Scheme and remuneration and expenses of Loss Assessors appointed under the Scheme				
						3	Payment under section 10 where a *factory is required* to be removed to and reconstructed in another locality				
						4	Refund of premium under section 16 or under paragraph 15 of the Scheme				
						5	Repayments of advances made under section 7 (3)				
						6	Miscellaneous expenditure (showing details, if necessary)				
3	Miscellaneous receipts					7	Sums disposed of in accordance with section 7 (4)				
	Total						Total				

SEVENTH SCHEDULE

(*See* Paragraph 6)

FORM 1

Transfer of Policy from owner to owner

EMERGENCY RISKS (FACTORIES) INSURANCE ACT, 1962
(63 of 1962)

Notice of assignment to be completed in triplicate and sent for registration to the Government Agent

Policy No

Buildings Rs

Machinery/

Plant/Material Rs

Total Rs

Description and situation of property

I/We do hereby assign all my/our rights, title and interest in the above-mentioned policy and all benefits thereunder to

Dated this day of 19

(Signature of Assignor)

Assignee

Assignees

I/We in accepting the above assignment agree that the application form referred to in the policy as forming the basis thereof shall continue to form the basis of the policy

Witness to Signature (Signature of assignee)

Registered in the Office books of the Government Agent at this day of

(Signature of Government Agent)

Note —In registering the assignment, the President is not to be understood to express any opinion as to the validity or otherwise of the Deed or Deeds of which he receives notice

The original of this form is to be returned to the Assignee

The duplicate of this form is to be sent to the Accounts Officer concerned

The triplicate of this form is to be retained by Government Agent

FORM 2

Change of Occupier

EMERGENCY RISKS (IACTORIES) INSURANCL ACT, 1962

(63 of 1962)

Notice of change of occupier to be completed in triplicate and sent for registration to the Government Agent

Policy No

Buildings Rs

Machmery/Plant

/Materials Rs

Total Rs

Description and situation of property

Name and address of owner

I/We do hereby assign all our right to act as Agent of the Owner in the matter of maintaining the above policy in force, to the Occupier namely

Dated this day of 19

Witness to signature (Signature of Occupier)

I/We being the new Occupier/Occupiers in accepting the above assign ment agree that the application form referred to in the policy as forming the basis thereof shall continue to form the basis of the Policy

Witness to signature (Signature of new Occupier)

Registered in the office books of the Government Agent at this day of 19

(Signature of Government Agent)

Note —In registering the assignment the President is not to be under stood to express any opinion as to the validity or otherwise of the Deed or Deeds of which he receives notice After registra tion, the original of this form must be sent to the new Occupiers the duplicate to the Accounts Officer concerned and the tripli cate retained by the Government Agent

NOTIFICATIONS

under

EMERGENCY RISKS (FACTORIES) INSURANCE ACT

No 1

S O 3947 —In exercise of the powers conferred by section 17 of the Emergency Risks (Factories) Insurance Act 1962 (63 of 1962) the Central Government hereby declares that the provisions of the said Act and of the scheme made thereunder shall apply to the insuring against emergency risks with effect from the first day of January, 1963, of

(*a*) the plant and machinery, whether above or below ground, appertaining to mines as defined in the Mines Act, 1952 (35 of 1952), building appertaining to mines and within a radius of two miles from the mine excavation and in relation to such plant, machinery, buildings and materials above ground as would, if the mine were a factory, be included in the term 'property insurable under the said Act',

(*b*) derricks, drills and rigs group gathering station and storage tank of oil mines, plant and machinery required for pumping, refining or processing any mineral oil, and pipe lines,

(*c*) the whole of the distribution systems of gas supply undertakings,

(*d*) the whole of the distribution and transmission systems, sub stations, switch houses and transformer houses of electric supply undertakings,

(*e*) the whole of the sluice houses, valve houses, water pipe lines, penstocks and other plant and machinery pertaining to the intake of hydraulic power of hydro-electric supply undertakings,

(*f*) standing tea crops in any garden belonging to the owner of any factory, in the same manner as they apply to property insurable under the said Act which appertains to a factory

2 (1) For the purposes of the application of the Emergency Risks (Factories) Insurance Scheme, in relation to the property insurable under item (1) of paragraph 1 the insurable value of the said property shall be ascertained in the following manner, namely,—

(*a*) the average annual sale-proceeds of cured and processed tea sold from a garden during the three accounting years immediately preceding the date on which the growing tea crop in that garden first becomes insurable under the scheme shall be ascertained and from the said average annual sale-proceeds deductions shall be made, firstly, on account of profits on sale, at an amount equivalent to five per cent of the ascertained average annual sale-proceeds, and secondly, on account of the average annual expenditure attributable to curing, processing, transport, handling and sales, at an amount equivalent to the average annual recurring expenditure of the garden during the said three years ascertained from the income and expenditure account, or, if no such account is maintained, from the profit and loss account (after excluding from such average annual recurring expenditure any expenditure on account of fertilisers, labour, establishment or any other expenditure connected with or arising out of agricultural operations),

(*b*) the balance of the sale proceeds as arrived at in accordance with the provisions of clause (*a*) shall be treated as the annual value of the standing tea crop in the garden and the said annual value shall be insurable under the scheme,

(c) the annual value of the standing tea crop in a garden as arrived at in accordance with the provisions of clause (b) shall be deemed, without any reference to the stage or degree of growth of the crop at any time, but subject to the provisions of clause (d), to be the insurable value thereof at all periods from the date of commencement of agricultural operations in the garden in any season to the date on which the plucking of tea in that garden is completed in that season, the dates aforesaid being certified in every season for the purposes of this scheme by the person who is liable to insure the crop,

(d) the owner of any tea garden shall, when he first becomes liable to insure the standing crop in that garden and at the commencement of any quarter during which any insurance policy issued under this scheme is in force thereafter, ascertain as nearly as may be in accordance with the principles set out in clauses (a) and (b), the value of the crop, which having been plucked is liable to or can be insured under the Emergency Risks (Goods) Insurance Scheme, and thereupon, the insurable value of the growing tea crop in that garden shall be reduced accordingly

(2) If any doubt arises whether the insurable value of the standing tea crop in any garden has been correctly computed in accordance with the principles set out in sub paragraph (1), the matter shall be referred to the Chairman, Tea Board, whose decision thereon shall be final

3 In the application of the Emergency Risks (Factories) Insurance Scheme to the undertakings mentioned in paragraph 1, including the property mentioned at item (f) thereof, the Government agent may make such verbal or consequential modifications, not derogating from the substance thereof, in the relevant documents as may be necessary or expedient for the purpose of adapting those forms or documents to the requirements of the said undertakings

[No F 112(20) INS/1/62]

No 2

S O 3948 —In exercise of the powers conferred by section 18, read with sub-section (6) of section 3, of the Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962) (hereinafter referred to as the "Act"), the Central Government hereby directs that the provisions of the Act and of the Emergency Risks (Factories) Insurance Scheme made thereunder (hereinafter referred to as the 'Scheme') shall with effect from the first day of January, 1963, extend and apply in the same manner as they apply to the insurance of property insurable under the Act in relation to a factory, to the insurance against emergency risks of inland vessels (including the hull, machinery and fitting thereof, and fuel and stores carried therein for the use of the vessel or the crew), being the property of any trading corporation or of any body of Port Trustees or Commissioners or of any other person, to the extent that such vessels are not for the time being property insurable under the Act and the scheme or goods insurable under the Emergency Risks (Goods) Insurance Act 1962 (62 of 1962), and the scheme made thereunder, and the Central Government hereby further directs that the Scheme in its application to inland vessel shall be modified as follows

Modifications

In the Scheme—

(i) Paragraph 5 shall be omitted

(ii) For clause (*b*) of paragraph 7, the following clause shall be substituted, namely,—

"(*b*) The hull, machinery and fittings of inland vessels, which are part of the property to be insured under the Scheme shall be valued as part of a serviceable vessel and not as scrap"

(iii) For sub-paragraph (1) of paragraph 11, the following sub-paragraph shall be substituted, namely,—

"(1) Every policy shall be in respect of all inland vessels insurable under the Act (including hull, machinery and fittings thereof, and fuel and stores carried therein for the use of the vessel or the crew) belonging to a single trading corporation or to a body of Port Trustees or Commissioners or other person specified by the Central Government under section 18"

(iv) In the First Schedule, in the forms of application for an original or a supplementary policy, for the entry "Description of property to be insured", the following entry shall be substituted, namely,—

Description of property to be insured					
1	2	3	4		
Item No	Registered No Name or Mark of Identity	Description of vessel and purpose for which used	(*a*) Value of vessel including the machinery and fittings (if any)	(*b*) Value of fuel and stores for the use of the crew	(*c*) Total value of (*a*) and (*b*)
			Rs	Rs	Rs

(v) In the form of policy set out in the Second Schedule, for the entry "Description and situation of the property insured", the entry "Description of property insured," shall be substituted and under the said entry, the column headings under the heading "Description of property to be insured" in the form of application for the issue of a policy, as they appear in the First Schedule, shall be inserted

(vi) In the form of application for an original or a supplementary policy set out in the First Schedule and in the form of policy set out in the Second Schedule, for the entries

"(*a*) Building Rs

(*b*) Plant, Machinery and Materials Rs

Total Rs "

wherever they occur, the following entries shall be substituted, namely,—

"(*a*) Inland Vessels (including the hull, machinery and fittings thereof) Rs

(*b*) Fuel and Stores for the use of the crew Rs

Tota lRs "

(vii) At the end of condition 4, in the "Conditions" set forth in t Second Schedule, the following shall be added, namely,—

"Every item, if more than one, of the Schedule of proper insured by this policy, shall be separately subject to th condition"

(viii) In condition 9 of the "Conditions" set forth in the Secon Schedule, for the words "the building or premises where th loss or damage has happened" the words "the vessel o property damaged" shall be substituted

(ix) Condition 17 of the "Conditions" set forth in the Secon Schedule shall be omitted and condition 18 shall b renumbered as condition 17

[No F 112(11)-INS/I/62]

APPENDIX IV

THE EMERGENCY RISKS (GOODS) INSURANCE ACT, 1962[1]
(No 62 of 1962)

[19*th December*, 1962]

An Act to make certain provisions for the insurance of goods in India against damage by enemy action during the period of emergency

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows

CHAPTER I

PRELIMINARY

1 **Short title, extent and duration**—(1) This Act may be called the Emergency Risks (Goods) Insurance Act, 1962

(2) It extends to the whole of India

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued on the 26th October, 1962 and for such further period as the Central Government may, by notification in the official *Gazette*, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had been repealed by a Central Act

2 **Definitions**—In this Act, unless the context otherwise requires,—

(*a*) "enemy" means—

(*i*) any person or country committing external aggression against India ,

(*ii*) any person belonging to a country committing such aggression ,

(*iii*) such other country as may be declared by the Central Government to be assisting the country committing such aggression ,

(*iv*) any person belonging to such other country ,

(*b*) "goods" means any materials, commodities or articles and includes materials, commodities or articles used in or for the construction of any ship up to the time at which the ship after construction is launched ,

(*c*) "Scheme" means the Emergency Risks (Goods) Insurance Scheme made under this Act ,

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1 The Act came into force on 1 1 1963 *vide* notification No S O 3951, published in the Gazette of India E O Part II Section 3 (ii), dated 28-12 1962.

(*d*) "seller of goods" includes a seller of goods acting as an agent;

(*e*) "supplier of goods" means a person carrying on a business in the course of which he supplies goods for the purpose of, or in pursuance of, contracts made by him for work, labour and materials;

(*f*) "emergency risks" means such risks arising from—

(*i*) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy;

(*ii*) any explosion or fire which involves explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;

(*iii*) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as a direct result of any such action as is described in sub-clause (*i*) or of any such explosion or fire as is described in sub-clause (*ii*);

(*iv*) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property;

(*v*) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property;

(*vi*) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of value of property

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CHAPTER II

INSURANCE GOODS AND INSURANCE SCHEME

3 Goods insurable under the Act—(1) Subject to the provisions of this section, the following goods shall, in relation to any person carrying on business in India as a seller or supplier of goods of any description, be deemed to be goods insurable under this Act, that is to say, all goods situated in India, or consigned from one place in India to another place in India and in transit, being either—

(*i*) goods of that description, or

(*ii*) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description

Provided that no goods shall be deemed to be insurable under this Act—

(*a*) in relation to any person, being the owner of the goods, who carries on business as a seller of goods, unless they are owned by him with a view to being sold, or to being used as material for the production of goods to be sold, or as ingredients or component parts of goods to be sold ;

(*b*) in relation to any person, being the owner of the goods, who carries on business as a supplier of goods, unless they are owned by him with a view to being supplied for the purpose of, or in pursuance of, a contract made by him for work, labour and materials, or to being used as material for the production of goods to be supplied as aforesaid, or as ingredients or component parts of goods to be supplied

(2) The Central Government may, by notification in the official *Gazette*, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Act and a copy of such notification shall be laid after it has been made, on the table of each House of Parliament when such House is in session for a period of thirty days or for the duration of the session in which it is laid, whichever period is less

(3) Nothing in sub-section (1) shall apply in relation to goods which are owned by Government or in respect of which the Government is the seller or supplier

Goods belonging to or sold or supplied by Government will not be insurable Sub clause (2) also provides that goods which are not normally insurable or which were not insured for similar risks during the last war may be excluded from the list of goods insurable under the Scheme

4 **Ownership** — (1) Save in so far as is otherwise expressly provided in this Act, any goods shall, subject to the provisions of this section, be deemed for the purposes of this Act to be owned,—

(*a*) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Act, by that person ;

(*b*) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Act and who is for the time being entitled, either unconditionally or conditionally, to have the property in the goods vested in him

Provided that where—

(*i*) any goods would, under the foregoing provisions of this section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in India, or who is entitled to have the property therein vested in him otherwise than in the course of such a business, and

(*ii*) any person carrying on business in India is for the time being entitled to sell the goods as agent,

the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being, or has been, constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

(*a*) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Act to be owned at any time by the person from time to time carrying on the business, or

(*b*) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of sub-section (3), be deemed, in a case to which clause (*a*) of this sub section applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the constract in question, by the person for whom it is being, or has been, constructed, and in a case to which clause (*b*) of this sub section applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (*b*) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(*a*) with the substitution for references to a ship or references to part of a ship,

(*b*) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the ship under the contract for the construction thereof,

(*c*) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed

(4) Where the person from time to time carrying on a business receives any money, under a policy issued in pursuance of the Scheme, in respect of the loss of or damage to a ship part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub section (3), the money shall be held by him on trust for the person who, apart from the provisions of those sub sections, would be deemed for the purposes of this Act to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship part or goods and subject also to the right to retain out of the money the amount of any expenses reasonably incurred by the first mentioned person in making good any loss or damage which he is liable to make good

5 **Emergency Risks (Goods) Insurance Scheme**—(1) The Central Government may, by notification in the Official *Gazette*, put into operation a scheme to be called the Emergency Risks (Goods) Insurance Scheme, where by the Central Government undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insurance of such persons against emergency risks, to the extent provided by or under this Act, in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business

(2) The Scheme may also extend—

(*a*) to the undertaking by the Central Government, in relation to any person carrying on business in India as seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods insurable under this Act which are not owned by him but in which he has an interest arising in the course of that business ;

(*b*) without prejudice to the provisions of clause (*a*) of this sub-section, to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such a person against emergency risks in respect of—

(i) any goods situated in India which are in his possession, otherwise than under a hire-purchase agreement, for the purposes of that business,

(ii) any goods situated in India which are subject to a mortgage, pledge or charge in his favour held by him in the course of that business,

being in either case goods which are not owned by him but which are insurable under this Act in relation to the person by whom they are owned ;

(*c*) to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such person against emergency risks in respect of any goods situated in India, which having been sold in India, for export from India, are in his possession for the purpose of such export and are goods which were prior to such sale insurable under this Act in relation to the person by whom they were then owned ;

(*d*) to the undertaking by the Central Government, in relation to any person carrying on any business in India as a seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods imported into India through any port of India, while such goods are situated at such port or are in transit to a place in India

(3) The Scheme shall be such as to secure—

(*a*) that the liability of the Central Government as insurer shall not extend to more than eighty per cent of the insurable value of the property insurable ;

(*b*) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided—

(*c*) that any premium under a policy so issued is payable at a rate not exceeding three per cent per annum of the sum insured as may be specified in the Scheme, and

(*d*) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme

(4) Different forms of policies may be specified under sub section (3) in relation to different descriptions of goods

(5) The Central Government may, by notification in the Official *Gazette*, add to, amend or vary any Scheme made under this Act

(6) Every Scheme shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme

6 **Employment of agents by Central Government**—The Central Government may, by notification in the Official *Gazette* employ or authorise the employment of any person to act as its agent for any of the purposes of this Act and may pay to the person so employed such remuneration as it may think fit

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CHAPTER III

COMPULSORY INSURANCE

7 **Power to make insurance compulsory**—(1) While the Scheme is in operation, no person shall, after such date as may be specified in this behalf by the Central Government by notification in the Official *Gazette*, carry on any business in India as a seller or supplier of goods, unless in respect of any goods insurable under this Act which are for the time being owned by him in the course of that business, there is in force a policy of insurance against emergency risks issued in accordance with the Scheme, whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being

Provided that the Scheme shall not restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable

under this Act which are for the time being owned by him within one and the same Presidency town or district in the course of that business does not exceed fifty thousand rupees

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to one thousand rupees and with further fine which may extend to five hundred rupees for every day after the first on which the contravention continues

8 **Omission to insure or to insure up to the full amount** —(1) Without prejudice to the provisions of sub section (2) of section 7, where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount payment of which has been so evaded and the amount so determined shall be payable by such person and shall be recoverable from him as an arrear of land revenue and shall be a first charge on the goods in respect of which the default was made

(2) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final

9 **Restrictions on carrying on of certain insurance business** —(1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on any business of insuring persons carrying on business in India as sellers or suppliers of goods against emergency risks in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business as is last mentioned

(2) Whoever contravenes the provisions of sub section (1) shall be punishable with fine which may extend to five thousand rupees and with further fine which may extend to one thousand rupees for every day after the first on which the contravention continues

10 **Emergency Risks (Goods) Insurance Fund** —(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Emergency Risks (Goods) Insurance Fund (hereinafter referred to as the "Fund") such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on composition of offences under section 15 or by way of expenses or compensation awarded by a court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme or for the payment by the Central Government of the remuneration and expenses of the Scheme

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the

making of that payment, an amount equal to the deficiency shall, after du appropriation made by Parliament by law, be paid into the Fund as a advance out of the Consolidated Fund of India

(4) If at any time the amount standing to the credit of the Fund exceed the sum which, in the opinion of the Central Government, is likely to b required for the making of payments out of the Fund, the excess shall b disposed of in such manner as the Central Government may think fit

(5) The Central Government shall prepare, in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund

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CHAPTER IV

MISCELLANEOUS

11 Power of Central Government to obtain information—(1) Any person authorised in this behalf by the Central Government may, for the purposes of ascertaining whether or not the requirements of this Act have been complied with,—

(*a*) require any person carrying on in India the business of fire insurance or of a seller or supplier of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(*b*) at any reasonable time, enter any premises occupied by any person carrying on in India the business of a seller or supplier of goods for the purposes of that business and may inspect the premises and require any person found therein who is for the time being in charge thereof, or in control of the business carried on therein, to produce to him and allow him to examine such accounts, books or other documents as may relate to the business carried on in the premises and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not, and, if so, to what extent, the person carrying on the business is insured under the Scheme in respect of goods owned by him in the course of that business, and of ascertaining the value of any goods insurable under the Scheme which are, or were at any relevant time, owned by him in the course of that business and the maximum amount which would be recoverable in respect of any such goods under a policy issued under this Act

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without any reasonable excuse to comply with a demand made thereunder, shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees

(4) Where in any proceedings in respect of a contravention of section 7 in relation to any business, it is proved, in relation to that business—

(*a*) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the person carrying on the business was duly made under this section and was not complied with, and

(*b*) that the person making the demand was not satisfied that there was such a policy in existence,

it shall be presumed, except in so far as the contrary is proved, that the said section 7 was being contravened in relation to that business at the time when the demand was made and continued to be contravened in relation to that business at all times thereafter

12 **Punishment for giving false information**—If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme,—

(*a*) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular, or

(*b*) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(*c*) with intent to deceive, withholds any material information,

he shall be punishable with fine which may extend to five thousand rupees or with imprisonment for a term not exceeding three months, or with both

13 **Refund of premiums in certain cases**—(1) Where goods of any description have been insured by a seller or supplier of goods for any period, and before that period has elapsed, the goods of that description have ceased, by virtue of a notification under sub-section (2) of section 3 to be goods insurable under this Act, the person who has insured such goods shall be entitled to a proportionate refund of the premium

(2) No suit shall be maintainable in any civil court against the Central Government or any person acting as the agent of the Central Government under section 6 for the refund of money paid or purporting to have been paid as premium in respect of any policy issued or purporting to have been issued under this Act

14 **Limitation on prosecution**—No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or any authority authorised in this behalf by the Central Government

15 **Composition of offences**—Any offence punishable under sub-section (2) of section 7, or sub section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government, on payment for credit to the fund of such sum as the Central Government or such authority, as the case may be, thinks fit

16 **Bar of legal proceedings**—No suit, prosecution, or other legal proceedings shall lie against the Central Government or against any person for anything which is in good faith done or intended to be done under this Act.

17 **Power to remove difficulties** —If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to whether a person is insurable in respect of any goods under this Act, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty ; and the order of the Central Government, in such cases, shall be final

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EMERGENCY RISKS (GOODS) INSURANCE SCHEME

S O 3945 —In exercise of the powers conferred by sub section (1) of section 5 of the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), the Central Government hereby puts into operation the following scheme

1 **Short title, extent and commencement** – (1) The scheme may be called the Emergency Risks (Goods) Insurance Scheme

(2) It extends to the whole of India

(3) It shall come into force on the first day of January, 1963

2 **Definitions** —In this scheme, unless the context otherwise requires—

(i) "the Act" means the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962) ,

(ii) "Government agent" means any person employed under section 6 to act as the agent of the Central Government for any of the purposes of the Act ,

(iii) "paragraph" means a paragraph of this scheme ,

(iv) "policy" means a policy of insurance issued under this scheme, and includes any supplementary policy ,

(v) "quarter" means a period of three months commencing on the first day of January, April, July or October ,

(vi) "section" means a section of the Act ,

(vii) words and expressions not defined herein have the meanings assigned to them in the Act

3 **Scope and extent of the scheme** —(1) The Central Government hereby undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insurance of such persons against emergency risks, to the extent provided by the Act, in respect of goods insurable under the Act which are from time to time owned or deemed to be owned by such persons in the course of such business

(2) The Central Government also hereby undertakes —

(a) in relation to any person carrying on business in India as a seller or supplier of goods the liability of insuring that person against emergency risks to the extent provided by the Act, in respect

of goods insurable under the Act which are not owned by him or deemed to be owned by him but in which he has an interest arising in the course of that business ,

(*b*) in relation to a person carrying on any business in India, the liability of insuring that person against emergency risks to the extent provided by the Act,—

(*i*) in respect of any goods situated in India which are in his possession, otherwise than under a hire-purchase agreement, for the purposes of that business, or

(*ii*) in respect of any goods situated in India which are subject to a mortgage, pledge or charge in his favour in the course of his business, being in either case goods which are not owned by him but which are insurable under the Act in relation to the person by whom they are owned ,

(*c*) in relation to a person carrying on any business in India, the liability of insuring that person against emergency risks to the extent provided by the Act, in respect of any goods situated in India, which having been sold in India, for export from India, are in his possession for the purpose of such export and are goods which were prior to such sale insurable under the Act in relation to the person by whom they were then owned , and

(*d*) in relation to any person carrying on any business in India as a seller or supplier of goods, the liability of insuring that person against emergency risks to the extent provided by the Act in respect of goods imported into India through any port in India, while such goods are situated at such port or are in transit to a place in India

4 **Compulsory insurance**.—(1) Every person carrying on business in India as a seller or supplier of goods which have not been exempted under sub-section (2) of section 3 shall take out a policy of insurance against emergency risks, to the extent provided by the Act, in respect of goods insurable under the Act which are from time to time owned or deemed to be owned by such person in the course of such business

Provided that the taking out of such an insurance policy shall not be necessary, if the insurable value of the said goods in any one and the same Presidency town or district is equivalent to or less than the sum of thirty thousand rupees

Provided further that nothing in this scheme shall be deemed to require any person who is compulsorily liable to insure any goods in any Presidency town or district under this scheme (on the ground that their value in that Presidency town or district exceeds thirty thousand rupees) to insure any other goods situated in any other Presidency town or district compulsorily under this scheme, unless the value of the goods situated in the latter Presidency town or district, as the case may be, exceeds thirty thousand rupees

(2) Where, as a result of the turnover of, or any change in, the stock of goods owned or deemed to be owned by a person who has taken out a

policy of insurance against emergency risks in respect of such stock of g
there is a net increase, after the issue of the policy of insurance, i
insurable value of such stock of goods, such person shall take out a fu
policy of insurance against emergency risks to the extent provided b
Act in respect of such net increase in the insurable value of such
of goods

Provided that a person who owns or is deemed to own insurable g
the stock of which is likely to fluctuate, may, instead of taking out a poli
insurance for the actual value of the insurable goods existing at the time
the policy of insurance is taken out, take out a policy of insurance under
scheme for the maximum amount beyond which the insurable value o
stock of insurable goods is not likely to fluctuate

5 **Voluntary insurance** (1) Any person who carries on business
seller or supplier of goods insured under the Act and which are owned
him in the course of such business may, at his option, take out a polic
insurance in respect of such goods against emergency risks, notwithstand
the fact that the value of such goods in one and the same Presidency town
district does not exceed thirty thousand rupees

(2) Where any voluntary insurance of goods is made under this pa
graph, liability of the Central Government as insurer shall not extend to m
than eighty per cent of the insurable value of the goods insured

6 **Goods in transit** —For the purposes of this scheme, goods in tran
shall be deemed, throughout the period commencing on the date on wh
they are consigned to any carrier and ending on the date on which they a
delivered to the consignee, to be situated in the Presidency town or district
which the place of consignment is located

7 **A single policy for all goods in a Presidency town or district** -
Every person insuring goods against emergency risks under this scheme sha
apply for insurance under a single policy covering all insurable goods whic
may at the time of the application be owned by him in one and the sam
Presidency town or district and which are not at the time of such applicatio
covered by any other policy insuring them against emergency risks under th
scheme, but any such person insuring any goods in more than one Presidenc
town or district may apply for a single policy of insurance covering all h
goods in all the Presidency towns or districts, if he indicates in that applica
ion the insurable value of the goods situated in such Presidency town o
district separately

8 **Method of application** —(1) Every application for insurance unde
this scheme shall be in accordance with the form set out in the First Schedul
and shall be made to the Government agent or to such officer of the Govern
ment agent as may be authorised by that agent in this behalf

(2) Every such application shall be accompanied by a treasury chalan
evidencing payment of the requisite premium into a Government Treasury
under the head LXIA—Receipts connected with the National Emergency,
1962—Central—Insurance Premiums under the Emergency Risks (Goods)
Insurance Scheme

9 **Mode of valuation of insurable property** —The insurable value of
goods for the purposes of this scheme shall be arrived at on the basis of the
prices prevailing at the time that the policy of insurance covering the goods
takes effect or is intended to take effect and shall, whenever any such policy

is replaced or renewed, be arrived at on the basis of the prices prevailing at the time that the policy is so replaced or renewed

10 **Rate of premium** (1) The premium payable under any policy of insurance issued in respect of the [1][quarter ending on the 30th September, 1963, shall be payable at the rate of Rs 7 50 paise] for every hundred rupees or any part thereof, of the sum insured

(2) The amount of any premium payable under sub-paragraph (1) shall be rounded off to the nearest rupee and shall be payable in one lump sum in respect of the entire quarter for which the policy is or is continued in force, provided that if any goods become insurable or are insured under this scheme after the commencement of a quarter, the premium shall be payable in one lump sum, which shall be equivalent to the amount payable in respect of goods insurable during the entire quarter reduced by an amount which bears to the first mentioned amount, the same proportion as the number of completed months in that quarter before the goods become insurable or are insured bears to three, the actual amount due in accordance with this provision being rounded off to the nearest rupee

11 **Issue of policy and verification of previous policies** (1) If an application has been correctly made out in the prescribed form, accompanied by a treasury chalan evidencing payment of the premium into a treasury under the head of account specified in sub-paragraph (2) of paragraph 8, the Government Agent shall issue a policy of insurance as soon as possible after the receipt of such an application

(2) If no chalan accompanies an application, or if the chalan is not in order, the application shall be returned to the applicant for re submission along with the required chalan

(3) If the chalan accompanying an application is in order, but the application for insurance is not in accordance with the form set out in the First Schedule, the chalan may be retained by the Government Agent and the application returned to the applicant for re-submission after being correctly made out

(4) If the chalan accompanying an application form is for an amount which falls short of the premium due on the insurable value of the goods, a policy for such proportion of the insurable value as the amount paid under the chalan bears to the premium due shall be issued, and the applicant shall be asked to make a further application in respect of the balance of the insurable value of property which may remain uncovered

(5) Notwithstanding anything contained in the foregoing provisions of this paragraph, if any applicant has taken out an insurance in respect of the same goods or any part thereof against fire, marine, accident or export credit insurance risks with any insurer other than the Government Agent himself, the Government Agent may, in his discretion, postpone the issue of the policy until enquiries have been made from that insurer

12 **Form and duration of policy** Every policy of insurance issued under the scheme shall be in the form set out in the Second Schedule, and

1 Subs by S O 1800 dated 25 6 1963 published at page 319 of *Gazette of India* (*Extraordinary*) Part II, Sec 3 (ii) dated 25-6 1963 (w e f 1 7 1963)

shall be in respect of the period ending on the last day of the quarter for which the policy is issued

13 Date of effect of policies (1) Where the policy of insurance is in relation to goods in respect of which the person who is the owner or is deemed to be the owner thereof is compelled to take out a policy of insurance in accordance with the provisions of paragraph 4, the policy shall be issued so as to take effect from the date on which he becomes so liable, if the premium is paid in advance or within seven days of the date on which he became so liable, or from the date of payment of the premium, if the premium is paid after the expiry of seven days from the date on which he becomes so liable

[1][* * * *]

(2) Where the policy of insurance is in relation to goods which are not compulsorily insurable, but may at the option of the person who is the owner or is deemed to be the owner thereof be insured under paragraph 5, the policy shall be issued so as to take effect from the date of commencement of the policy as stated in the application, if the premium is paid within seven days of such commencement, or from the date of payment of the premium, if the premium is paid after the expiry of seven days from the date of such commencement

(3) For the purposes of sub-paragraph (1) any person who is the owner or is deemed to be the owner of goods which are insurable under this scheme shall be required to indicate in his application the date on which he becomes or has become so liable

14 Failure to pay premium and evasion (1) Where any person has failed to pay the premium due from him or to insure as, or to the full amount, required by the Act and has thereby evaded the payment of any money which he would have had to pay but for such failure, the amount evaded shall be determined in accordance with the Third Schedule

(2) Every person against whom a determination has been made in pursuance of sub-paragraph (1) may, within the period laid down in the Third Schedule, appeal to the Central Government, whose decision shall be final

(3) Where the amount determined in accordance with the provisions of sub-paragraph (1) or sub-paragraph (2) is fully recovered, the Government Agent shall, as soon as possible after such recovery, send the requisite application forms to the defaulter for completion and return, and a policy or supplementary policy of insurance, according as the recovery is in respect of non-insurance or under-insurance, shall be issued by the Government Agent on the receipt of the applications correctly filled in, the said policy or supplementary policy being made out so as to take effect from the date on which the amount was fully recovered

15 Record of policies to be maintained at places where goods are situated At every place where goods which are insurable or are insured under this scheme are stored or held, a register shall be maintained indicating the number and date of the policy issued under this scheme covering the said goods the place at which and the office of the Government Agent a

1 Item so omitted by S O 585 dated 19-3-1964 published at page 981 of *Gazette of India* Part II Sec. 3 (ii) dated 30-3-1962 (w. e. f. 1-4-1962)

which the policy was issued, the insurable value of the goods as shown in the application on the basis of which the policy was issued or as otherwise on record with the office of the Government Agent, and the period of currency of the insurance policy; and the said register shall be available for inspection by any officer authorised to obtain information or to take any other action under section 8

16 **Loss of policy** In the event of the loss of a policy, a duplicate policy shall not be issued, but if it is satisfactorily proved that a policy has been issued, the absence of that policy shall not be a bar to any claim thereunder

17 **Overlapping policies, cancellation and refund** (1) Where it is established to the satisfaction of the Central Government that insurance under the scheme has been taken out separately by two or more persons in respect of the same goods, the policy taken out by any such person may, on an application made by him, and after such enquiry as the Central Government may think fit, be cancelled, and a refund of premium may be allowed to him, unless he has recovered the premium from any other person, in which case the refund may be made to that person

(2) Notwithstanding anything contained in this scheme, where a policy has been taken out in respect of any goods insurable under this scheme and the said goods are subsequently exempted under sub-section (2) of section 3, or destroyed otherwise than by any action or measure comprised in the expression "emergency risks", the policy shall be cancelled with effect from the date on which the exemption takes effect or, as the case may be, the goods are destroyed as aforesaid, and thereupon—

(*a*) no further premium shall be payable under the policy, and

(*b*) out of the amount of the premium collected immediately before the cancellation of the policy in respect of the quarter in which the policy is cancelled, a refund shall be made in the proportion which the number of complete months for which the policy is cancelled bears to three

18 **Share of risk to be borne by the insured person** (1) The insured person shall bear in respect of such claim twenty per cent of the loss or damage

(2) If at the time of the happening of any loss or damage, the total value of the goods insured shall exceed the sum insured under the policy, the insured person shall be considered as being his own insurer for the excess as well as for twenty per cent of the sum insured, for the purpose of his bearing a rateable proportion of the loss

19 **Statement of claims, verification and payment** (1) All claims shall be submitted in writing in the form given in the Fourth Schedule to the Government Agent within the time specified in condition 7 of the conditions set forth in the Second Schedule

(2) The loss as a result of emergency risks in the value of property insured under this scheme shall be computed on the basis of the value at the prices prevailing at the time that the policy of insurance takes or has taken effect after making due allowance for depreciation up to the time of the occurrence of the loss or damage, or on the basis of the value at the prices prevailing at the time at which the loss occurs or has occurred, whichever may be less

(3) On receipt of the claim, the government agent shall have the claim verified, and the loss or damage, if any, assessed by a person who is for the time being a loss assessor recognized by the Central Government in this behalf, or if the Central Government so directs, by such person or persons as may be specially deputed by it for this purpose

(4) As soon as the loss assessor has verified the claim and assessed the loss or damage, if any, he shall make a report thereon to the Government Agent, who shall after such further verification as he thinks fit to make, forward the report, with his remarks and recommendation to the Government of India in the Ministry of Finance (Department of Economic Affairs)

(5) If the claim is proved to the satisfaction of the Central Government, a payment order in favour of the claimant will be issued by the Central Government as soon as possible through the Government Agent in full settlement of the claim

(6) No interest shall be due in respect of any payment under this scheme which remains unpaid for any reason

(7) On receipt of the payment, the claimant shall furnish to the Government agent a receipt in the form set out in the Fifth Schedule

20 Policies or benefits not assignable or transferable A policy issued under this scheme or a claim under any such policy shall not be assignable or transferable to any other person and no notice of any trust in respect of any such policy or claim shall be receivable by the Government Agent or by the Central Government

21 Provision for safeguarding of property insurable under the scheme (1) A policy issued under this scheme may provide for safeguarding any property insurable under this cheme against loss or damage as a result of emergency risks or for minimising any such loss or damage

(2) Any condition imposed by the policy may require the person who is the owner or who is deemed to be the owner of the goods, to take such reasonable precautions in regard to the storage of the goods or the packing or transport thereof while they are in transit as may be necessary in order to eliminate or reduce the risk of loss or damage

22 Persons authorised for certain purposes of the Act Any person may be authorised by the Central Government under section 11 to obtain any information and to do any other thing as provided for in the said section, and every person who is liable to take out, or who has taken out, a policy of insurance under this scheme shall at all times provide and cause to be provided all reasonable facilities to the person so authorised, for enabling him to discharge his duties in pursuance of or in relation to this scheme

23 Publication of accounts An account of all sums received into and paid out of the Emergency Risks (Goods) Insurance Fund shall be prepared in the form set forth in the Sixth Schedule and shall be published annually

24 Interpretation If any doubt arises in regard to the interpretation of any provisions of this scheme, the matter shall be referred to the Central Government whose decision thereon shall be final

FIRST SCHEDULE

(*See* Paragraph 8)

FORM OF APPLICATION

GOVERNMENT OF INDIA

EMERGENCY RISKS (GOODS) INSURANCE ACT, 1962 (62 of 1962)

Application for insurance of goods insurable under the Act

No

1 Applicant's name

2 Address

3 Business

4 Goods to be insured

5 Situation of goods, stating separately the insurable value of goods situated in each Presidency town or district

6 Estimated full value (which is the sum for which insurance must be effected) Rs

7 (*a*) Date on which the goods became compulsorily insurable under the Act

(*b*) Where insurance is optional, the date on which insurance is to commence

8 Are the goods insured against fire, marine accident or export credit insurance risks ?

If so, state (*a*) Name of insurer

(*b*) Policy No

(*c*) Sum insured Rs

9 Has any other person any insurable interest in the goods to be insured ? If so, give particulars

Note.—A policy once issued cannot be assigned or transferred nor is any part of the premium returnable except as provided in section 13 or under paragraph 17 of the Emergency Risks (Goods) Insurance Scheme

10 If you do not own the goods within the meaning of section 4, the following should be answered

(i) Name and address of the owner

(ii) What is the nature of your interest in the goods to be insured ?

(iii) If you are in possession of the goods, in the course, and for the purpose, of your business, state the purpose for which the goods are in your possession

(ii) Are you aware whether the owner has also effected or applied for insurance on the goods to be insured ?

11 If you have already taken out one or more policies under the scheme for this quarter, please fill up this portion of the application, otherwise cross it out

The following are the particulars of policies already issued to me/us for the same quarter

No /Nos	Issued by (local office)	Date	Sum Insured

I/We warrant that the above statements and particulars are true and I/We request you to effect Emergency Risks (Goods) Insurance on my/our behalf with the Government of India in terms of the standard policy which I/we agree to accept

I/we hereby agree that this application shall be the basis of the contract between the President and myself/ourselves

I/we enclose chalan dated for Rs paid into the *Treasury

*Reserve Bank of India

*State Bank of India

at

Signature of Applicant

Date

(*Strike out whichever is inapplicable)

ACKNOWLEDGMENT

Received from

application number dated

along with Chalan dated

for Rs paid into the *Treasury

*Reserve Bank of India

*State Bank of India

at on the

day of 19

Whereas the insured has made and forwarded to the Government Agent a signed application for insurance which application he has agreed shall be the basis of this Policy and has paid the amount of premium named above

Now this Policy witnesseth that in consideration of the insured paying to the President the said premium, the President agrees (subject to the conditions contained herein, which conditions shall, so far as the nature of them respectively will permit, be deemed to be conditions precedent to the right of the insured to recover hereunder) that if during the period of insurance stated above the goods insured or any part of such goods shall suffer any loss or damage, being loss or damage caused by any act comprised in the expression "emergency risks" as defined for the time being in the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), hereinafter referred to as "the Act", the President will, where the loss or damage is suffered whilst the goods affected are situated in India, or are in transit from one place in India to another place in India, indemnify the insured against diminution in value caused by that loss or damage to the extent provided by or under the Act

In witness whereof I, being duly authorised in that behalf, have hereto set my hand for and on behalf of the President

Dated

the 19

It is hereby agreed and declared that shall, to the extent of their interest in the goods insured, be entitled jointly with the insured to the rights hereby granted to the insured, but not so as to grant to them any further or greater rights than those of the insured under this policy

Signed for and read on behalf of the President this
day of 19

Note—This policy cannot be assigned or transferred and no premium is returnable except as provided under section 13 of the Act or under paragraph 17 of the Emergency Risks (Goods) Insurance Scheme

CONDITIONS

The President shall be under no liability under any policy of insurance to which these conditions apply (hereinafter referred to as "the policy") if and in so far as the insured is not entitled to be insured for the sum thereby insured in respect of the goods insured under the Act

2 The liability of the President under the policy shall not exceed in the aggregate eighty per cent of the sum thereby insured, not after the happening of any loss or damage, the sum insured by the policy shall be deemed to be reduced by the amount of that loss or damage, and thereupon the liability of the President shall be limited to eighty per cent of such reduced

The liability shall bear, in respect of such claim, twenty per cent or damage

4 If at the time of the happening of any loss or damage, the total value of the goods insured shall exceed the sum insured under the policy, the insured shall be considered as being his own insurer for the excess as well as for twenty per cent of the sum insured, for the purpose of his bearing a rateable proportion of the loss.

5 If at the time of the happening of any loss or damage, there be any other insurance effected by or on behalf of the insured covering any of the goods suffering that loss or damage against emergency risks, the liability of the President under the policy shall be limited to eighty per cent of its rateable proportion of such loss or damage

6 The insured shall at the request and expense of the President do and concur in doing and permit to be done all such acts and things as may be reasonably required by the President for the purpose of enforcing any rights and remedies to which the President is or would become entitled or subrogated upon paying for or making good any damage, whether such acts and things shall be required before or after that indemnification by the President

7 On the happening of any loss or damage, the insured shall forthwith give notice thereof in writing to the Government agent, and shall within ten days after such loss or damage, or such further time as the Government agent may in writing allow, at his own expense deliver to the Government agent a claim in writing containing as particulars an account as may be reasonably practicable of the several articles or portions of goods suffering that loss or damage and of the amount of such loss or damage, having regard to their value at the time of the loss or damage, together with details of the interest of any person other than the insured in the goods insured and details of any other insurances on the goods insured The insured shall also give to the Government agent all such proofs and information with respect to the claim as may reasonably be required, together with (if demanded) a declaration verified by an affidavit of the truth of the claim and of any matters connected therewith No claim under the policy shall be payable, unless the terms of this condition have been complied with

8 If the claim be in any respect fraudulent, or if any fraudulent means or devices be used by the insured or anyone acting on his behalf to obtain any benefit under this policy, or if any loss or damage be occasioned by the wilful act or with the connivance of the insured, all benefits under the policy shall be forfeited

Provided that the benefits under the policy shall not be forfeited even though the loss or damage is occasioned by the wilful act and with the connivance of the insured, where the wilful act is done under orders of proper authority or where the insured permits certain measures to be taken under orders of proper authority, and if any question arises as to whether any act of the kind mentioned above has been taken under proper authority, the Central Government shall decide the matter and such decision shall be final and fully binding on the insured

9 On the happening of any loss or damage, in respect of which a claim is or may be made under the policy, the Government agent and every person authorised by the Government agent may, without thereby incurring any liability, and without dismissing the right of the President to rely upon any conditions of the policy, enter, take or keep possession of the building

or premises where the loss or damage has happened and may take possession or require to be delivered to them any of the goods insured, and may keep possession of and deal with such goods for all reasonable purposes and in any reasonable manner This condition shall be evidence of the leave and licence of the insured to the President so to do If the insured or anyone acting on his behalf shall not comply with the requirements of the President, or shall hinder or obstruct the President or any person acting on his behalf in doing any of the abovementioned acts, then all benefits under this policy shall be forfeited The insured shall not in any case be entitled to abandon any property to the President, whether taken possession of by the President or not

10 No refund of premium shall be allowed in respect of the policy, except as provided by or under the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962)

11 The policy shall not be assignable or transferable

12 The insured shall at all times take due precautions for the safety of the goods insured having regard to the nature thereof, and in particular, if at any time any goods insured sustain damage due to emergency risks, the insured shall take all reasonable steps to preserve the goods insured from damage or further damage, as the case may be

13 If in his application for the insurance effected by the policy, the insured shall have intentionally made a material misstatement as to the value of the goods insured, all benefits under the policy shall be forfeited

14 If the insured shall fail to comply with any instruction made or issued under the authority of the Central Government for safeguarding the goods against loss or damage from emergency risks, all benefits under the policy shall be forfeited

15 The following condition may be included in the policy at the request of the insured

"It is hereby agreed and declared that shall, to the extent of their interest in the goods insured, be entitled jointly with the insured to the rights hereby granted to the insured, but not so as to grant to them any further or greater rights than those of the insured under this policy"

THIRD SCHEDULE

[*See* paragraph 14]

Where any officer authorised in this behalf by the Central Government has reason to believe that any person who is the owner or is deemed to be the owner of any goods insurable under the Act situated within the area over which he is authorised to act has failed to insure goods, or to the full amount required by the scheme or having applied for a policy of insurance under the Act or the scheme has failed to pay any premium payable under the Act within seven days of the date of commencement of the policy as stated in the application, and has thereby evaded payment by way of premium of any money which he would have to pay but for such failure, the officer may serve on such person a notice requiring him (i) to show cause on a date and at the time and place specified in this behalf why he failed to insure the goods as, or to the full amount, required by the Act, and further (ii) to produce before the officer on such date any document or other evidence in support of his case

2 Upon cause being shown and after giving the defaulter an opportunity of being heard in support of the cause, the officer shall assess the insurable value of the goods and shall determine on the basis of such assessment the amount of premium, if any, payment of which has been evaded by the defaulter In doing so, the officer shall take into consideration such information as he may have received in accordance with Section 11 after giving the defaulter an opportunity to explain the same

3 If a person who is owner or is deemed to be the owner of any goods fails to show cause against a notice issued under paragraph 1 of this Schedule, the officer shall assess the insurable value of the goods on the strength of such materials as may be available to him and shall determine on the basis of such assessment, the amount of premium, payment of which has been evaded by the defaulter

4 When any sum has been determined in accordance with paragraph 2 or paragraph 3 of this Schedule, the officer shall send to the defaulter a copy of his recorded assessment and determination, duly certified by him, and serve on him a notice of demand specifying (i) the amount payable by him, (ii) the date within which it shall be paid and (iii) the Treasury into which it shall be paid

5 Any person against whom an assessment and a determination have been made in accordance with paragraph 2 or paragraph 3 of this Schedule, may appeal to the Government of India in the Ministry of Finance, Department of Economic Affairs, within thirty days of the date of receipt of the notice of demand

6 Where an assessment and determination have been made against more persons than one in respect of the same goods, every person preferring an appeal shall do so separately and in his own name

7 An appeal under paragraph 5 or 6 above shall contain all material statements and arguments relied on by the appellant, shall be accompanied by a copy of the notice of demand served upon the appellant, and shall be preferred through the authority against whose order the appeal is preferred

8 The appellate authority shall consider—

(a) whether the facts on which the notice of demand was based have been established, and

(b) whether the sum determined as payable is excessive, adequate or inadequate,

and after such consideration shall pass such order as it thinks proper But no order enhancing the amount determined as payable by the appellant shall be passed without communicating to him the grounds on which such order is proposed to be passed and giving him an opportunity to show cause against the same

9 The appellant shall have no right to appear in person or to be represented before the appellate authority

FOURTH SCHEDULE

[*See* paragraph 19]

GOVERNMENT OF INDIA

EMERGENCY RISKS (GOODS) INSURANCE ACT, 1962 (62 of 1962)

STATEMENT OF CLAIMS UNDER THE ACT

Through

Government Agent,

at

I/We of (address) do hereby solemnly declare that on or about o'clock a m /p m Indian Standard Time on the day of 19 goods which were insured under the policy or policies detailed in Schedule 'A' annexed hereto, were destroyed or damaged by an act comprised in the expression "emergency risks" as defined by the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962) The actual details of the act (manner in which the damage occurred) are given below

I/We further solemnly declare that at the time of the said loss or damage, the actual value of all goods as described in the said policy or policies amounted to Rs as more particularly set forth in the annexed Schedule B, and that apart from myself/ourselves no person other than has any interest in the said goods

I/We, therefore, claim from the Government of India the sum of Rs as detailed in Schedule C annexed hereto and I/we solemnly declare that this Statement of Claims is a true and accurate statement of the loss sustained by me/us, without inclusion of profit of any kind

Declared before me *Signed*

this day of 19 ,

and identified by who is personally known to me

Court Seal

Magistrate

SCHEDULE A

Statement of Policies in force on the date of loss or damage

Policy No	Date of Issue	Sum insured	The insured goods as described in Policy
(1)	(2)	(3)	(4)

SCHEDULE B

Statement of all goods insured under the Act

Description of goods	Sound value of goods	Location of goods
(1)	(2)	(3)

SCHEDULE C

Statement of loss or damage

Description of goods damaged or destroyed	Quantity	Sound value	Value of salvage	Actual loss	Amount to be paid by the Central Government
(1)	(2)	(3)	(4)	(5)	(6)

ASSESSOR'S CERTIFICATE

I/We being Assessor/s duly appointed under paragraph 19 (3) of the Emergency Risks (Goods) Insurance Scheme certify that from a careful examination carried out by me/us of the scene of the loss or damage and from the production of books, documents, invoices and other evidence, have satisfied myself/ourselves that the goods claimed were fully insured at the time of the loss or damage and that the statement of claims detailed herein, [and in our report attached] is a true and proper statement of the actual loss sustained by the insured as the direct result of emergency risks only

Time taken on assessment

Fee Rs

Signature of Loss Assessor

Address

Date

RECOMMENDATION OF GOVERNMENT AGENT

We certify that the claim detailed in this Statement of Claims was received by us in accordance with condition 7 of the Insurance Policy, that the Statement of insurances in force contained in Schedule A is a correct statement, that we have investigated the claimant s tile and we recommended that (i) [except as stated in the attached report * the sum of Rs be paid in full and final settlement of the loss, (ii) and (iii) the sum of Rupees be paid to the Assessor in respect of his fee and expenses

*Delete and initial deletion if no separate report

Signature of Government Agent

Date

GOVERNMENT ORDERS FOR DISPOSAL

FIFTH SCHEDULE

[*See* paragraph 19]

GOVERNMENT OF INDIA

EMERGENCY RISKS (GOODS) INSURANCE ACT, 1962 (62 of 1962)

Receipt of Claims

Loss No

Received this day of 19 , from the Government of India the sum of Rupees in full discharge of all claims upon them under the Policy/Policies No /Nos issued under the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), for loss or damage, arising from Emergency Risks as defined in the said Act, which occurred on the day of 19 , in consequence of which the amount insured by this Policy is reduced to the extent of Rs

Signature of claimant

Stamp

SIXTH SCHEDULE

[*See* paragraph 23]

Account of sums received into and paid out of the Emergency Risks (Goods) Insurance Fund during the year ending 19

	Amount	Progress of receipts up to the end of			Amount	Progress of expenditure up to the end of	
	Rs P	Rs	P		Rs P	Rs	P
	Receipts				*Expenditure*		
1	Insurance premium			1	Remuneration and expenses of Government Agent, and cost of forms		
2	Advances from the Consolidated Fund of India under section 10 (3)			2	Payments of liabilities under the Emergency Risks (Goods) Insurance Scheme and remuneration and expenses of Loss Assessors appointed under the Scheme		
				3	Refunds of premium under section 13 or under paragraph 17 of the Scheme		
				4	Repayments of advances made under section 10 (3)		
				5	Other Miscellaneous expenditure (showing details if necessary)		
3	Miscellaneous			6	Sums disposed of in accordance with section 10 (4)		
	Total				Total		

APPENDIX

Notifications

S O 3949 —In exercise of the powers conferred by section 6 of the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), the Central Government hereby employs the Oriental Fire and General Insurance Company, Limited, Bombay, to act as its agent for the purposes of the said Act *

[F No 112 (20)-INS/I/62]

S O 3951 —In exercise of the powers conferred by sub-section (1) of section 7 of the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), the Central Government hereby specifies the first day of January, 1963 as the date for the purposes of that sub-section *

[F No 112 (19)-INS/I/62]

S O 3953 —In exercise of the powers conferred by sub-section (2) of section 3 of the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962), the Central Government hereby directs that the goods of the description, specified in the Schedule annexed hereto shall, notwithstanding anything contained in (i) section 3, be deemed to be goods not insurable under the said Act *

Provided that nothing in the Schedule shall, in relation to any person carrying on a business in the course of which he constructs or repairs ships or propelling machinery for ships, have effect in relation to any goods appropriated by him for the construction or repair of any particular ship or part of such ship

SCHEDULE

1 Goods forming the subject of a hire-purchase agreement or agreements, wherein the hirer is a person not carrying on the business of selling, letting or hiring goods of the description so hired and wherein provision is made for payment spread over a period of not less than six months

2 Coal (including anthracite and canal coal) and coke, lignite whether briquetted or not, manufactured fuel of which coal coke or lignite is the chief constituent

3 Iron ore

4 Manganese ore of all descriptions except manganese ores used in the manufacture of chemicals, electric batteries, manganese metal, glass or ceramics

5 Chrome ore

6 Ores, concentrates, drosses, and residues for the smelting of aluminium, antimony, copper, lead, nickel, zinc, spelter and tin

*Published in the *Gazette of India*, E O , Part II, Sec 3 (ii) dated 28-12 1962

7 Ores, concentrates, mattes, drosses and residues of gold, silver, platinum, palladium, iridium, rhodium, osmium and ruthenium

8 Non metalliferous mining and quarry products, unmanufactured, o her than mica and salt (sodium chloride)

9 China clay

10 Crude asbestos

11 Cement including asbestos cement and cement clinker

12 Lime

13. Bricks and tiles of brick earth and clay, and refractory bricks, blocks and tiles

14 Sheets, pipes and other building materials made partly of cement and partly of asbestos

15 Slates for roofing

16 Granite blocks

17 The following manufactures of stone, namely

(*a*) pavement kerbs and setts ,

(*b*) channels ,

(*c*) slabs and flags , and

(*d*) manufactured stone for building purposes

18 Concrete products of all descriptions

19 Low tension insulators suitable for pressures up to six hundred and fifty volts

20 Heavy stoneware jars and pipes

21 Cinder, scale and slag

22 Recovered sewage grease and sewage sludge

23 Scrap of the following metals and alloys thereof, namely, alu minium, antimony, copper, lead, nickel, tin, zinc and spelter

24 Iron and steel scrap

25 Spent oxide of iron

26 Lead in white lead stacks and chambers

27 Nickel, unwrought, in all forms

28 Copper, unwrought, whether refined or not, in ingots, bars, billets, wirebars, blocks, slabs, cakes, cathodes, anodes, and copper shot

29 Aluminium, antimony, lead, nickel, tin, zinc and spelter unwrought, in ingots, pigs, blocks, bars and slabs

30 Gold, silver, platinum, palladium, iridium, rhodium, osmium and ruthenium and alloys thereof in grains, ingots, bars, wires or powder

31 Alloys of aluminium, antimony, copper, lead, nickel, tin, zinc or spelter unwrought, in ingots, pigs, blocks, cakes, bars and slabs

32 Iron and steel of the following descriptions, namely —

(*a*) pig iron ,

(*b*) ferro alloys other than in powder form ,

(*c*) ingots ,

(*d*) billets, blooms and slabs ,

(*e*) tinplate and sheet bars ,

(*f*) plates, medium plates, whether fabricated or not , sheets, coated and uncoated ,

(*g*) angles, channels, tees, joists, piling sections and other sectional material, whether fabricated or not ,

(*h*) rounds, rods, wire rods, squares, hexagons, flats and all other sections and shapes, other than bright ,

(*i*) rails, sleepers, fishplates and sole plates , Tinplates, terne plates, black plates and silver finished plates ,

(*j*) hoops and strips, hot or cold rolled, other than bright ,

(*k*) tyres, axles and wheels, other than those held for the assembly of bicycles and motor vehicles or spare parts thereof ,

(*l*) castings, blocks for forgings, blocks for pressings and stampings (except where wholly or partly machined) and pressings ,

(*m*) colliery arches and pit props ,

(*n*) pipes, coated and uncoated, and hot finished tubes ,

(*o*) assemblies of plates and sectional materials as component parts of structures

33 Aluminium, brass, copper and nickel silver and yellow metal in sheets and circles

34 Gold, silver, platinum, palladium, iridium, rhodium, osmium and ruthenium, and alloys thereof, in sheets or tubes, and ply metal in the form of sheets, tubes or wires of which any of the said metals or any alloy thereof is a component

35 Natural pearls, mounted or unmounted

36 Other precious and semi-precious stones, unmounted, cut or uncut

37 Gem-set jewellery, that is to say, precious and semi precious stones mounted in gold or platinum, palladium, iridium, rhodium, osmium and ruthenium

38 All other jewellery or other articles made, except for fittings and embellishments, of gold, silver, platinum, palladium, iridium, rhodium, osmium and ruthenium and alloys thereof

39 Jewelled watch cases

40 Gold sovereigns and half sovereigns

41 Unmounted diamonds, whether rough or polished, and industrial diamonds, mounted or unmounted

42 Paintings in oil or water colours, pencil, ink and charcoal drawings pastels on canvas, paper boards or paper, and hand printed impressions taken from blocks, plates or like material, whether framed or unframed and sculpture, whether in the round, in relief or in intaglio

43 Postage stamps intended for collection purposes denoting a postal service or services, being marks or devices embosed or impressed or comprised in a label

44 Objects of art or craftsmanship being not less than hundred years old

45 The following compounds of radium of a concentration exceeding ten per cent, namely, bromide, carbonate, chloride and sulphate

46 Printing machinery of the following descriptions, namely, type setting, letterpress (including rotary and flat bed), lithographic, photogravure and stereotyping

47 Printed books being not less than fifty years old and manuscripts

48 Slates for damp courses and slate slabs

49 Gas of the kind supplied by public utility undertakings, other gases sold as fuel and water and electricity

50 Any goods situated at a port or on any vessel in India which while so situated are covered against emergency risks by a marine insurance policy and any goods in respect of which a policy of insurance is in force whereby the owner of the goods for the time being is insured in respect thereof against emergency risks, provided that if the value of the goods for the time being exceeds that for which they are covered against emergency risks by the policy, the goods shall be insured under the Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962) for such excess

[F No 112(16) INS/1/62]

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